

Wisconsin



Weights and Measures Laws – Farm Markets

Wisconsin Department of Agriculture, Trade and Consumer Protection
PO Box 8911, Madison, WI 53708-4939

Phone: 608-224-4942

Fax: 608-224-4939

E-mail: DATCPWeightsAndMeasures@Wisconsin.gov

Website: [http://datcp.wi.gov/Consumer/Weights and Measures/index.aspx](http://datcp.wi.gov/Consumer/Weights_and_Measures/index.aspx)

FARM MARKETS – WISCONSIN WEIGHTS AND MEASURES LAWS

Wisconsin farm markets are governed under the same laws as other retail business establishments. Compliance with Wisconsin's Weights and Measures law is an integral part of fair trade among businesses and fair treatment of consumers.

Wisconsin Weights and Measures law, Wis. Stat. ch. 98, is the main dynamic in maintaining equity in the marketplace. Along with the National Institute of Standards and Technology or NIST Handbook 44, Wis. Stat. ch. 98 protects consumers by ensuring that weighing devices meet a high standard of quality and accuracy. City sealers and state weights and measures inspectors use state and federal standards to determine if a device is correct of the application. State inspectors and city sealers have full enforcement authority to uphold these laws. The following are excerpts from Wis. Stat. ch. 98.

Because there may be penalties for non-compliance with Wis. Stat. ch. 98, the first step is to educate the seller about the laws and provide assistance in understanding how to comply with those laws. That is why this handbook was developed. The enforcement process is a progressive one. State inspectors and city sealers work diligently to gain compliance through education.

CHAPTER 98

WEIGHTS AND MEASURES LAW

98.03 State standards; specifications and tolerances.

98.03(2)

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

98.05 Enforcement authority; measurement center laboratory.

98.05(2)

(2) Sealers or inspectors may enter and go into or upon any structure or premises, and may stop any person or vehicle for the purpose of enforcing this chapter. They shall inspect and test any weights and measures or commodities which are sold or used commercially as often as necessary to secure compliance with this chapter, and may seize as evidence, or reject and mark as "rejected" those which are incorrect. A representative sample may be used as the basis to determine whether any lot is incorrect.

Inspectors and sealers also look at the selling methods used for different commodities. They must determine if the method of sale is correct for each particular commodity sold. All commodities not in liquid form can be sold by net weight. However, there are exceptions to this rule, which allow some commodities to be sold by other methods such as count, bunch, etc. Fresh fruit and vegetables have many exceptions that are found on the attached tables at the back of this handout (see tables on page 5).

ATCP 91.03 Commodity types; methods of sale.

91.03(1)(f)

(f) Fresh fruits and vegetables. Fresh fruits and vegetables shall be sold at retail by weight, except that fresh fruits and vegetables identified in NIST Handbook 130, ch VI., section 2.3.2, shall be sold according to that section. Berries and small fruits such as cherries, currants and cherry tomatoes, if sold by dry measure, may only be sold in containers having capacities of one-half dry pint, one dry pint or one dry quart.

Handbook 130, 2009 edition

2.3.2. Fresh Fruits and Vegetables

(L&R, 1979, p. 176; 1980; 1982, p. 152; 2008)

Guideline

Recognizing the difficulty faced by consumers when more than one method of sale is employed in the same outlet for the same product, noncomparable methods of sale (e.g., weight and measure) for the same produce item in the same outlet should be minimized.

This guideline applies to all sales of fruits and vegetables. There are two tables, one for specific commodities and one for general commodity groups. Search the specific list first to find those commodities that either don't fit into any of the general groups or have unique methods of sale. If the item is not listed, find the general group in the second table. The item may be sold by any method of sale marked with an X.
(Amended 2008) **(SEE TABLES ON PAGE 5)**

98.06 Method of sale of commodities.

98.06(1)

(1) Commodities in liquid form shall be sold by liquid measure and commodities not in liquid form shall be sold by weight but liquid commodities may be sold by weight and commodities not in liquid form may be sold by count or measure if such methods are in general use and give accurate information as to the quantity of commodity sold.

Some sellers may determine prepackaging and pre-pricing of commodities makes sense for their business. Besides the requirements for labeling a prepackaged item with the product identity and declaration of responsibility (name, complete address and zip code) the package must also have a declaration of net weight. It is important to understand that **NET WEIGHT** is the weight of the product only, subtracting the weight of all wrappers, plastic, labels and other non-consumable items known as tare.

98.07 Declaration of quantity.

98.07(1)

(1) No commodity which is marked, tagged or labeled, or for which a sign is displayed, with a selling price, shall be sold unless the weight, measure or count of the commodity is conspicuously declared on the commodity or its tag, label or sign, but a declaration of count is not required if the selling price is for a single unit, or a set or combination of commodities customarily sold to and understood by consumers as a single unit, or if the commodity is packaged prior to sale and the package contains 6 units or less which can be easily counted without opening the package.

Wis. Stat. ch. 98 is very specific on the method of sale for bread. Bread must be sold by weight. The weight must either be stated on a placard, if sold from a bulk case, or as a net weight on the bread's package label.

98.21 Sale of bread.

98.21(1)

(1) Except as provided in sub. (2), no person may manufacture for sale in this state, offer to sell or sell bread unless the bread is sold by weight.

98.26 Prohibited acts; penalty; injunction.

98.26

(1) A person who does any of the following acts shall forfeit not less than \$100 nor more than \$500 for the first offense and not less than \$200 nor more than \$1,000 for a subsequent offense. A person who intentionally does any of the following acts shall be fined not more than \$10,000 or imprisoned not more than 9 months or both:

98.26(1)(a)

(a) Hinders, obstructs or impersonates a sealer or inspector.

98.26(1)(b)

(b) Uses or has in possession for use in buying or selling any commodity or service, or sells, any incorrect weight or measure or causes a weight or measure to be incorrect.

98.26(1)(c)

(c) Represents in any manner a false quantity or price in connection with the purchase or sale, or any advertising thereof, of any commodity, thing or service.

98.26(1)(d)

(d) Uses or disposes of any rejected weight or measure, or commodity, or removes therefrom any official tag, seal, stamp or mark, without written authority from a sealer or inspector.

Specific requirements do exist for scales used for retail. All scales shall be of a commercial type meeting NIST Handbook 44 requirements. Those newer than 1986

shall be marked with NIST Class III; those newer than January 1, 1997 must also be NTEP (National Type Evaluation Program) approved. These strict standards ensure accurate devices are used for all retail transactions. Scales found not in compliance will, in some cases, receive a grace period before they need to be replaced. Inaccurate scales are either rejected or given a deadline for calibration, repair or replacement, by a licensed weights and measures service company.

If you have specific questions concerning any weights and measures issue, inspectors or program staff can help you.

You can also access the laws using the following website links:

Wis. Stat. § 98

<http://docs.legis.wisconsin.gov/statutes/statutes/98.pdf>

Wis. Admin. Code § ATCP 90 and 91

http://legis.wisconsin.gov/rsb/code/atcp/atcp_vol_2.html

Or contact us at:

Madison DATCP Office 608-224-4942 or Consumer Hotline 800-422-7128

E-mail: DATCPWeightsAndMeasures@Wisconsin.gov

Our office is open Monday through Friday from 7:45 a.m. to 4:30 p.m.

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, brussels 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		

Fresh Fruits and Vegetables general category clarifications:

- Onions- the Edible Bulb category refers to all onions including the two listed as examples.
- Leaf Lettuce- is included in the Leaf Vegetables (lettuce, cabbage, celery, etc) category.
- Spinach- is included in the Leaf Vegetables (parsley, herbs, loose greens) as a loose green.

Note* The Handbook 130 fresh fruits and vegetables method of sale interpretations and guidelines section 2.3.2 does not cover fruit and vegetables that have been cut or processed. The appropriate method of sale for cut or processed fruits and vegetables is weight.