

SALE OF COMMODITIES BY COUNT

Question: Can produce required by State code to be sold by weight or specific dry measure be placarded instead of weighed at the time of sale or sold by specific dry measure?

Answer: In Chapter 91 of The Wisconsin Department of Agriculture Trade and Consumer Protection Administrative Code (ATCP 91) an allowance is given to retailers who wish to sell items required by law to be sold by weight, to be sold by count from bulk. The accompanying language is in ATCP 91.02(3) and Wisconsin Statutes 100.183:

ATCP 91.02(3): No person may sell a bulk or unpackaged commodity by weight at retail unless one of the following applies:

- (a) The commodity is weighed at the time of sale.
- (b) The weights of individual commodity units are accurately premarked on those units.
- (c) **A placard stating the guaranteed minimum individual weight of the individual commodity units displayed for sale is conspicuously posted at the display location.**

100.183 Wisconsin Statutes- Fraud, advertising foods.

(1) No person, firm, corporation or association shall, with intent to sell, or increase the consumption thereof, or create an interest therein, make, publish, disseminate, circulate, or place before the public in this state, or cause, directly or indirectly to be made, published, disseminated, or placed before the public in this state, in a newspaper or other publication, or in the form of a book notice, handbill, poster, bill, circular or pamphlet, or in any other manner, an advertisement of any sort regarding articles of food, which advertisement contains any assertion, representation or statement which is untrue, deceptive or misleading.

If a vendor wishes to sell an item, required to be sold by weight or specific dry measure, by count from bulk, they will be required to display a placard in the form of the one below. In any advertisement of such sales, it will be required to declare both the minimum net weight (though the word minimum is not required) and the price per pound. No item can weigh less than the placarded weight.

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| SWEET POTATOES | |
| \$0.50 EACH | |
| NET WT. 8.0 OZ. | \$1.00 / LB. |

A chart based on ATCP 91- Method of Sale for Retail Sales of Produce can be found on our website www.milwaukee.gov/farmmarket.