

TITLE 42
LEGISLATIVE RULES
DEPARTMENT OF LABOR

SERIES 11
METHOD OF SALE OF COMMODITIES

§42-11-1. General.

1.1. Scope. -- These legislative rules and regulations are for the purpose of regulating the method of sale of commodities.

1.2. Authority. -- W. Va. Code §47-1-19 and 47-1-24

1.3. Filing Date. -- May 2, 1976

1.4. Effective Date. -- June 1, 1976

§42-11-2. Food Products.

2.1. Berries and Small Fruits - Shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of 1/2 dry pint, 1 dry pint, or 1 dry quart, and when sold by measure, the containers shall be deemed not to be packages for labeling purposes.

2.2. Butter, Oleomargarine, and Margarine - Shall be offered and exposed for sale and sold by weight only in units of 1/4 pound, 1/2 pound, 1 pound, or multiples of 1 pound.

2.3. Flour, Corn Meal, and Hominy Grits-Wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, corn flour, corn meal, and hominy grits, whether enriched or not, shall be packaged, kept, offered or exposed for sale, or sold only in units of 2, 5, 10, 25, 50, or 100 pounds: **Provided**, That packages in units of less than 2 pounds or more than 100 pounds shall be permitted.

2.4. Meat, Poultry, and Seafood-Shall be sold by weight, except the following, which may be sold by weight, measure, or count:

(a) Shellfish

(b) Items sold for consumption of the premises.

(c) Items sold as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold.

(d) Items sold as part of a sandwich.

When must poultry, or seafood is combined with some other food element to form a distinctive food product, the quantity representation may be in terms of the total weight of the product or combination, and a quantity representation need not be made for each element.

In the case of ready-to cook, stuffed poultry products, the label must show the total net weight of the poultry product and the minimum net weight of the poultry in the product.

2.5. Fluid Milk Products -- All fluid milk products including but not limited to milk, lowfat milk, skim milk, cultured milks and cream shall be packaged for retail sale only in units of 1 gill, 1/2 liquid pint, 1 liquid pint, 1 liquid quart, 1/2 gallon, 1 gallon, 1-1/2 gallons, 2 gallons, 2-1/2 gallons, or multiples of 1 gallon: **Provided**, That packages in units of less than 1 gill shall be permitted.

2.6. Other Milk Products-Cottage cheese, cottage cheese products, and other milk products which are solid, semi-solid, viscous or a mixture of solid and liquid, as defined in the Pasteurized Milk Ordinance of the United States Public Health Service, as amended in 1965, shall be sold in terms of weight. Provided that cottage cheese, cottage cheese products, sour cream, and yogurt shall be packaged for retail sale only in units of 8, 12, 16, 24, 32, 64, 80, and 128 ounces avoirdupois: **And provided further**, That multipack or single serving sizes of 6 ounces or

less shall be sold only in even ounce increments (Standard package sizes shall apply to lowfat and dry curd cottage cheese products as of July 1, 1976.)

2.7. Pickles -- The declaration of net quantity of content on pickles and pickle products, including relishes but excluding one or two whole pickles in a transparent wrapping which may be declared by count, shall be expressed in terms of fluid measure. Sales of pickles from bulk may be by count.

§42-11-3. Non - Food Products.

3.1. Coatings -- Asphalt paints, coatings, and plastics shall be sold in terms of liquid measure.

3.2. Peat and Peat Moss -- Applies only with respect to organic matter of geological origin, excluding coal and lignite, originating principally from dead vegetative remains through the agency of water in the absence of air and occurring in a bog, swampland, or marsh, and containing an ash content not exceeding twenty-five (25) percent on a dry-weight basis (dried in an oven at 105 degrees C. (221 degrees F.) until no further weight loss can be determined).

(a) Declaration of Quantity -- The declaration of quantity of peat and peat moss shall be expressed in weight units or in cubic measure units.

(b) Units

(1). Weight -- Peat and peat moss sold in terms of weight shall be offered and exposed for sale only in units of fifty (50) pounds, forty (40) pounds, twenty (20) pounds, ten (10) pounds, or three (3) pounds.

(2). Cubic Measure -- Peat and peat moss sold in terms of cubic measure shall be offered and exposed for sale only in units of 6, 5.5, 4, 2, 1, 0.5, 0.3, or 0.2 cubic feet. If the commodity is labeled in terms of compressed cubic measurement, the quantity declaration shall represent the quantity in the compressed (the latter declaration not exceeding the actual amount of material that can be recovered).

3.3. Roofing and Roofing Material -- Shall be sold either by the square or by the square foot only.

(a) Definitions

(1). Square -- The term "square" shall mean the quantity of roofing or roofing material that, when applied according to directions or instructions of the manufacturer, will cover an area of one-hundred (100) square feet exclusive of side laps or side joints: **Provided**, That, in the case of roofing or roofing material of corrugated design, the side lap or side joint shall be one full corrugation.

(2) Square Foot -- The term "square foot" shall mean the quantity of roofing or roofing material that, when applied according to the directions or instructions of the manufacturer, will cover 1 square foot (144 square inches) exclusive of side laps or side joints.

(b) Declaration of Quantity -- When the declaration of quantity on a package of roofing or roofing material contains the term "square" it shall include, plainly and conspicuously, a numerical definition of the term "square" for example, "One square covers one-hundred (100) square feet of roof area."

(1). Common Fractions -- The use of the common fraction one-third ($1/3$) is specifically authorized in the quantity statement of a package of roofing or roofing material when, and only when used as the common fraction of the "square".

(2). Quantity Statement -- The primary declaration shall only be in terms of a square or square feet. There is no prohibition against the use of supplementary quantity declarations, such as shingle dimensions, but in no case shall the weight of the material be stated or implied. However, the use of numerical descriptions for rolls of felt roofing material may continue to be used.

3.4. Sealants -- Calking compounds, glazing compounds, and putty shall be sold in terms of liquid measure.

§42-11-4. Application.

4.1. Presentation of Price -- Whenever an advertised, posted, or labeled price per unit of weight, measure, or count for any commodity includes a fraction of a cent, all elements of the fraction shall be prominently displayed, and the numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of numerals representing the whole cent.

4.2. Machine Vended Commodities -- All vending machines dispensing packaged commodities shall indicate:

(a) Product identity.

(b) Net quantity.

(c) Name, address, and telephone number of responsible party.

The requirements for product identity and net quantity can be met either by display of the package or by information posted on the outside of the machine.

4.3. Combination Quantity Declaration -- Whenever the method of sale for a bulk or packaged commodity requires the use of a statement including two or more declarations of weight and measure, or count, or size, or other appropriate combinations, the following shall apply to the particular commodity:

(a) Beverageware: Pressed and Blown Tumblers and Stemware - The allowable difference between actual and declared capacity shall be:

1. Plus or minus 1/4 ounce for items of five (5) ounce capacity or less;

2. Plus or minus five (5) percent of the stated capacity for items over five (5) ounce capacity.

(b) Paper Plates -- The allowable difference between actual and declared dimensions shall be minus 1/8 inch to plus 1/4 inch.

(c) Sanitary Paper Products -- The allowable difference between actual and declared dimensions for toilet tissue shall be plus or minus 1/16 inch. The allowable difference for paper towels, paper napkins, and facial tissue shall be plus or minus 1/8 inch.

4.4. Railroad Car Tare Weights -- Whenever stenciled tare weights on freight cars are employed in the sale of commodities or the assessment of freight charges, the following conditions and requirements shall apply:

(a) All newly stenciled or restenciled tare weights shall be accurately represented to the nearest one-hundred (100) pounds and the representation shall include the date of weighing.

(b) The allowable difference between actual tare weight and stenciled tare weight on freight cars in use shall be:

1. Plus or minus three hundred (300) pounds for cars fifty thousand (50,000) pounds or less;

2. Plus or minus four hundred (400) pounds for cars over fifty thousand (50,000) pounds to and including sixty thousand (60,000) pounds;

3. Plus or minus five hundred (500) pounds for cars over sixty thousand (60,000) pounds.

(c) Tare weight determinations for verification or change of stenciled weights shall only be made on properly prepared and adequately cleaned freight cars.

(d) The provisions in Section 4 shall be effective as of July 1, 1973 for all railroad cars stenciled or restenciled with a tare weight after that date and for all railroad cars as of January 1, 1973.

(e) Tank cars, covered hopper cars, flat cars equipped with multi-deck racks, or special superstructure, mechanical refrigerator cars, and house-type cars equipped with special lading protective devices must be reweighed and

restenciled only by owners or their authorized representatives:

1. When car bears no lightweight (empty weight) stenciling;

2. When repairs or alterations result in a change of weight in excess of the permissible lightweight tolerance.

4.5. Fireplace and Stove Wood -- For the purpose of this regulation, this section shall apply to the sale of all wood, natural and processed, for use as fuel.

(a) Definitions

1. Fireplace and Stove Wood -- Any kindling, logs, boards, timbers or other wood, split or not split, advertised, offered for sale, or sold as fuel.

2. Cord -- The amount of wood which is contained in a space of one hundred twenty-eight cubic feet, when the wood is ranked and well stowed. For the purpose of this regulation, "ranked and well stowed" shall be construed to mean when pieces of wood are placed in a line or row, with individual pieces touching and parallel to each other, and stacked in a compact manner.

3. Representation -- A "representation" shall be construed to mean any advertisement, offering, invoice, or the like that pertains to the sale of fireplace or stove wood.

(b) Identity -- A representation may include a declaration of identity that indicates the species group (Example: fifty percent (50%) hickory, fifty percent (50%) miscellaneous softwood). Such a representation shall indicate, within ten percent accuracy, the percentage of each group.

(c) Quantity -- Wood, of any type, for use as fuel shall be advertised, offered for sale and sold only by measures, using the term "cord" and fractional parts of a cord; except that wood, natural or processed, offered for sale in packaged form shall display the quantity in terms of cubic feet, to include fractions of cubic feet.

(d) Prohibition of Terms -- The terms "face cord", "rack", "pile", "truckload", or terms of similar import shall not be used when advertising, offering for sale, or selling wood for use as fuel.

(e) Delivery Ticket or Sales Invoice -- A delivery ticket or invoice shall be presented by the seller to the purchaser whenever any nonpackaged fireplace or stove wood is sold. The delivery ticket or sales invoice shall contain at least the following information:

1. The name and address of the vendor

2. The name and address of the purchaser

3. The date delivered

4. The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity

5. The price of the amount delivered

6. The identity of the most descriptive terms commercially practicable, including any quality representation made in connection with the sale

4.6. Prefabricated Utility Buildings -- These buildings shall be offered for retail sale on the basis of usable inside space as follows:

(a) Length, measured from inside surface of wall panels at the base;

(b) Width, measured from inside surface of wall panels at the base;

(c) Height, measured from the base to the top of the shortest wall panel.

Note 1. Inside dimension shall be declared to the nearest inch.

Note 2. If total usable inside space is declared in a supplemental declaration, it shall be to the nearest cubic foot.

§42-11-5. Revocation of Conflicting Regulations.

All provisions of all orders and regulations heretofore issued on this same subject that are contrary to or inconsistent with the provisions of this regulation, and specifically West Virginia Administrative Regulations, Commissioner of Labor, Chapter 21-2, Series 1, (1972), Section 13, are hereby revoked.

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(Plus all the volunteer
help we can get)

TO: Andy Brown

AGENCY: Dept. of Labor

FROM: JUDY COOPER, DIRECTOR ADMINISTRATIVE LAW DIVISION

DATE: Nov. 20, 1990

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 11 TITLE Methods of Sale of Commodities

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Stephen L. Gasto

TITLE OF PERSON SIGNING: Director, Weights & Measures Division

DATE: December 3, 1990

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____