

Chapter ATCP 91

METHODS OF SALE OF COMMODITIES

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Note: Chapter Ag 54 was renumbered chapter ATCP 91 under s. 13.93 (2m) (b) 1, Stats., Register, April, 1993, No. 448.

Note: Section 98.06 (1), Stats., states the general requirement that commodities in liquid form be sold by liquid measure and that commodities not in liquid form be sold by weight, but further permits the sale of liquid and non-liquid commodities by other methods of weight, measure or count if the methods are in general use and give accurate information as to the quantity of commodity sold. Under this exception, differing methods of sale have been used in the sale of commodities of the same kind or class, with a significant lack of uniformity among sellers as to specific methods of sale under which such commodities may be sold. While such differing methods of sale may arguably have been in general use, some have not provided purchases with accurate or meaningful quantity information and proliferation of methods of sale among sellers deprives purchasers of the ability to readily compare offerings by competing sellers. This can result in consumer deception and confusion and unfair competition in the marketplace.

Section 98.07 (4), Stats., charges the department of agriculture, trade and consumer protection with the responsibility of prescribing, by rule, standards for determining and declaring weight, measure or count in order to prevent consumer deception. The purpose of these rules is to achieve greater uniformity in methods of sale used in the state, increase the accuracy of quantity information, prevent consumer deception and confusion, and promote fair competition. Some of the other statutes regulating methods of sale are: ss. 97.18 (3) (b) - oleomargarine; 98.12 - prepackaged frozen desserts; 98.21 - bread; 98.22 - bulk commodities; 98.245 - liquefied petroleum gas; 98.246 - petroleum products, and 100.18 (6) and (8), motor vehicle fuel. Some other rules regulating methods of sale are: ch. ATCP 92 - retail motor fuel; s. ATCP 78.03 (3) (d) - yogurt, ch. ATCP 109 - wholesale cuts of meat, and s. ATCP 92.05 - liquefied petroleum gas. In addition, a number of method of sale requirements are expressed in the labeling requirements and exemptions set forth in ss. ATCP 90.10 and 90.11.

This chapter is adopted under authority of ss. 93.07 (1), 98.07 (3) and (4), Stats. Violations are subject to the penalties and remedy provided under s. 98.26, Stats.

**ATCP 91.01 Definitions.** (1) "Commodity" means any article of commerce.

(2) "Cord" means the amount of firewood that, when ranked and well stowed, occupies a space of 128 cubic feet, or a pile four feet by eight feet by four feet.

(3) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(4) "Face cord" means an amount of firewood composed of pieces of uniform length of less than four feet which, when ranked and well stowed, compose a pile eight feet wide and four feet high.

(5) "Firewood" means fireplace and stove wood sold for use as fuel.

(6) "Food" means foods as defined in s. 97.01 (6), Stats., and includes all articles or components of any article used for human consumption.

(7) "Method of sale" means the unit or system of weights or measures used in the sale of commodities to determine quantity.

(8) "Mollusks" means oysters, clams, mussels, and snails.

(9) "Potpourri" means any mixture, however denominated, consisting principally of dried herbs, spices, flowers or other vegetable matter which is intended to be used as an odorizer or for decorative purposes and not intended to be eaten by humans.

(10) "Ranked and well stowed" means that 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.

(11) "Ready-to-eat" means, in the case of food normally intended to be eaten heated, that the food is heated at the time the consumer receives it.

(12) "Sell", "sale" or "sold" includes any advertising or offer to sell.

(13) "Sold at retail" means any sale of commodities directly to the consumer.

History: Cr. (1), (2), (4), (5), (8), (9), (10), (11) and (12), renum. and am. (3), (6) and (13) from Ag 54.02 (1), (2) and (4), renum. (7) from Ag 54.02 (3), Register, February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.02 Sale of bulk commodities.** (1) Prices at which bulk commodities or commodities not in package form are sold, advertised, offered or displayed for sale by weight shall be declared in terms of whole units of weight, and not in common or decimal fractions, or multiples of whole units of weight.

(2) If a retailer has more than one bulk commodity or commodity not in package form offered or displayed for sale in any advertisement or the same physical area of the retailer's premises, prices for all commodities sold by weight that are included in the advertisement or displayed in the area shall be declared in terms of the same whole unit of weight.

(3) If individual units of an unpackaged commodity are sold at retail with a weight declaration on a counter card or placard instead of either a weight declaration on each unit or with the commodity being weighed at time of sale, the actual weight of each unit offered for sale shall equal or

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exceed the declared weight. The price per whole unit of weight of the commodity shall be stated on the placard.

History: Cr. Register, July 1977, No. 259, eff. 8-1-77; renum. and am. (1), (2), (4) to Ag 54.01 (3), (6) and (13), renum. (3) to Ag 54.01 (7), (1) renum. from Ag 54.07, cr. (2) and (3) Register, February 1991, No. 422, eff. 3-1-91.

**ATCP 91.03 Fresh fruits and vegetables.** Fresh fruits and vegetables shall be sold at retail by weight, except that items identified under pars. (a) to (d), may be sold at retail by weight or other methods of sale as provided under pars. (a) to (d):

(1) (a) The following fresh fruits and vegetables may be sold at retail by weight or by count, at the seller's discretion:

1. Apples coated with taffy or caramel.
2. Artichokes.
3. Avocados.
4. Cantaloupes.
5. Cauliflower.
6. Celery.
7. Citrus fruits.
8. Corn on the cob.
9. Coconuts.
10. Eggplant.
11. Garlic.
12. Head lettuce.
13. Kiwanos.
14. Kiwi fruit.
15. Loquats.
16. Mangoes.
17. Melons (whole).
18. Papayas.
19. Peppers.
20. Persian limes.
21. Persimmons.
22. Pineapples.
23. Pomegranates.
24. Prickly pear.
25. Pumpkins.
26. Quince.
27. Squash.
28. Star fruit.
29. Ugli fruit.

(b) The following fresh vegetables may be sold at retail by weight or bunch, at the seller's discretion:

1. Chard.
2. Dill.
3. Endive.
4. Escarole.
5. Green or spring onions.
6. Greens.
7. Kale.
8. Kohlrabi.
9. Leaf lettuce.
10. Leeks.
11. Parsley.
12. Root vegetables with green tops attached.
13. Spinach.
14. Thyme.
15. Watercress.

(c) The following fruits may be sold at retail by weight or by dry measure units of one quart, one pint, or one-half pint, at the seller's option:

1. Berries.
2. Cherries.
3. Cherry tomatoes.
4. Chokecherries.
5. Currants.
6. Plum tomatoes.

Note: The container sizes permitted for berries and small fruits are established by s. 98.06(2), Stats.

(d) The following fruits may be sold by weight or by dry measure units of one bushel, one-half bushel or one peck at the seller's option:

1. Nectarines.
2. Peaches and similar products.
3. Pears.
4. Plums.
5. Tomatoes.

(e) The following fruits and vegetables may be sold by weight, by count or by dry measure units of one bushel, one-half bushel or one peck at the seller's option:

1. Apples.
2. Cucumbers.

(2) **PICKLED FRUITS AND VEGETABLES.** Pickled fruits and vegetables, including pickled relishes, may be sold by fluid measure, except that 2 whole pickles in transparent wrapping and pickles sold from bulk containers may be sold by count.

(3) **MIXED FRESH FRUITS OR VEGETABLES.** Mixed fresh fruits or vegetables gift wrapped in baskets or other reusable containers shall be sold at retail by weight or count, at the seller's option.

Note: Combination packages containing fresh fruit and vegetables and other food or non-food commodities must be labeled in accordance with s. ATCP 90.10 (5), subject to the exception granted by s. ATCP 90.01 (6).

History: Cr. Register, July 1977, No. 259, eff. 8-1-77; am (1) (intro), r. and recr. (1) (a) to (d), cr. (1) (e) and (3), Register, February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.04 Meat, poultry, seafood and cheese.** Except as otherwise provided in this chapter or other applicable state or federal law, meat, poultry, seafood, cheese, or products derived in whole or substantial part therefrom, shall be sold by weight, subject to the following:

(1) Mollusks in the shell may be sold by weight, by count or by dry measure units of one bushel. If removed from the shell, mollusks shall be sold by weight.

(2) Fresh or frozen processed mollusks on the half shell shall be sold by net weight excluding the weight of the shell.

(3) Fresh oysters, clams, or mussels removed from the shell and placed in a container shall be sold by drained weight or by fluid volume with a maximum of 15 percent free liquid by weight.

(4) Glazed, individually frozen pieces of seafood shall be sold by weight. No part of the declared weight may consist of ice.

(5) Live fish or live shellfish shall be sold by weight or by count.

(6) Cheese coated with wax shall be sold by net weight of the cheese excluding the weight of the wax.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77; renum. and am. (1) to (intro), r. and recr. (2), cr. (3) to (6), Register February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.05 Ready-to-eat restaurant foods and carryout foods.** (1) Ready-to-eat restaurant foods and carryout foods not in liquid form shall be sold at retail by weight, and ready-to-eat restaurant foods and carryout foods in liquid form shall be sold at retail by volume, except:

(a) Food and other commodities sold for immediate consumption on the premises.

(b) Ready-to-eat entrees and sandwiches and single service containers of ready-to-eat side dishes and desserts sold for consumption off the premises where sold.

(c) Single serving containers of beverages other than beverages sold in hermetically sealed cans or bottles.

(d) Ready-to-eat chicken, chicken parts and fish pieces prepared on the retailer's premises but not packaged in advance of sale.

(2) Notwithstanding sub. (1), if a retailer advertises or otherwise represents the weight, measure or count of a ready-to-eat restaurant food or carryout food, that representation must be accurate. Weight declarations for cooked red meats shall be presumed to apply to the pre-cooked weight of the meat unless the advertisement or representation would lead a reasonable person to believe that it applies to the weight of the meat after cooking.

History: Cr. Register, July 1977, No. 259, eff. 8-1-77; renum. and am. Ag 54.05 to (1)(intro), cr. (1)(a) to (d) and (2), Register, February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.06 Frozen desserts.** Ice cream, custard, ice milk, frozen yogurt, sherbet, and other frozen desserts of a similar nature packaged at time of sale at retail shall be sold by weight.

Note: Section 98.12, Stats., requires that frozen desserts packaged prior to sale may be sold only by fluid measure in containers with capacities of one-half liquid pint, one liquid pint, one liquid quart or a multiple of one liquid quart.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.07 Firewood.** (1) Firewood in quantities greater than 4 cubic feet shall be sold by one of the following units of measure:

(a) Weight.

(b) Cord or fraction of a cord.

(c) Face cord, if the measure "face cord" is qualified by a statement of the length of the pieces of wood in the face cord.

Note: For example, a quantity of firewood pieces 24 inches long sufficient when stacked and well stowed to make a pile 8 feet long and 4 feet high may be sold by the actual weight of the firewood, or as 1/2 cord, or as a 24" face cord.

(2) A seller of bulk firewood shall give to the buyer a delivery ticket or invoice for each delivery of firewood stat-

ing the name and address of the seller, the date of the delivery, the quantity of firewood delivered and the price of the firewood.

(3) Firewood bundled in quantities of less than 4 cubic feet shall be sold only by weight, volume or count.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.08 Roofing, roofing material and siding.** (1) Roofing, roofing material and siding shall be sold at retail by the square, by the square foot if sold in inch-pound units, or by the square meter if sold in metric units.

(2) In this section:

(a) "Square" means the quantity of roofing, roofing material or siding that, when applied according to directions of the manufacturer, will cover an area of 100 square feet exclusive of laps or joints.

(b) "Square foot" means the quantity of roofing, roofing material or siding that, when applied according to the directions of the manufacturer, will cover an area of one square foot exclusive of laps or joints.

(c) "Square meter" means the quantity of roofing, roofing material or siding that, when applied according to the directions of the manufacturer, will cover an area of one square meter exclusive of laps or joints.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.09 Polyethylene.** (1) Each sale of polyethylene sheeting and film, other than food wrap sold in packages for consumption in the home, shall include all of the following information:

(a) Length and width.

(b) Area in square feet or square meters.

(c) Thickness in mils.

(d) Weight of the polyethylene, for polyethylene packaged or cut to size prior to sale.

(2) Each sale of polyethylene food wrap sold in consumer size packages for consumption in the home shall include all of the following information:

(a) Length and width.

(b) Area in square feet or square meters.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91.

**ATCP 91.10 Potpourri.** Potpourri shall be sold at retail by weight or by dry measure units of one dry pint or one dry quart, or fractions thereof, at the seller's option, except that no quantity declaration is required for:

(1) Potpourri sold in a package containing a vase, censer, bowl or similar article designed to be used in displaying potpourri or using potpourri as an odorizer.

(2) Potpourri sold as stuffing of a sachet or other cloth article.

(3) Potpourri sold in packages containing less than one ounce.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91.