

Weights and Measures Guidelines for Sales at Farmers' Markets, Roadside Stands and Other Commercial Outlets

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Retail sale of fruits, vegetables and other items, including those at farmers' markets and roadside stands, is regulated by the Nebraska Weights and Measures Act. Learn about what's required by the Act and how to comply.

Retail sale of fruits, vegetables, and other items is regulated by the Nebraska Weights and Measures Act. Vendors may erroneously believe that they are exempt from these regulations because they sell relatively little compared to a supermarket or because they only sell for a few months of the year. They are wrong. The Nebraska Weights and Measures Act applies to all sales. The regulation was established to ensure that buyers receive sufficient and accurate information with which to compare quantity and price. Even if you sell by count, "three ears of corn for \$1," for example, compliance with the Weights and Measures Act is necessary. As a vendor, complying with the regulations protects you from perceptions of shortchanging or misrepresenting your product. This NebGuide focuses on the sale of fresh produce at farmers' markets, roadside stands, and other seasonal outlets.

Method of Sale

You may have seen fruits and vegetables made available using several different types of containers or measures. Sometimes these units are not the same as those used in wholesale markets or within specific markets, such as restaurants. These container sizes may not convert directly to common household units used in freezing or canning produce. However, legal weights and measures are required at all times when selling to consumers at farmers' markets, roadside stands, or other commercial outlets. Use the following information as a guideline on how to sell foods directly to consumers. If you have specific questions or a situation that is not clear to you regarding weights or measures, please use the contact information provided at the end of this publication for assistance.

Produce may be sold by weight, count, or measure. For example:

- Direct sale by weight:* Apples: 50¢ per pound
- By weight in prepackaged form:* 2-pound package for \$2 per package
- By count:* Apples: 6 for \$1; Watermelon: \$3 each
- By measure:* Strawberries: \$2 per dry quart

Bread **must** be sold by weight, whether packaged or sliced. Other bakery products such as cookies, rolls, and buns may be sold by weight or count. For example:

By weight: 8 ounce package of rolls: \$1; Fresh bread: 1 lb net wt.; Whole wheat bread: 1 lb 5 oz. net wt.

By count: 6 rolls for \$1

By count: Rolls: 50¢ each

Meat, poultry, and fish must be sold by weight. Whole eggs are sold by count. Selling something by count is pretty simple to understand. Selling by weight or measure involves legally defined weights and measures. A quart is a legal dry quart or legal liquid quart, not necessarily a quart basket filled as full as you feel like filling it. A pound is a legal pound, as judged by calibrated weights certified by the National Institute of Standards and Technology (formerly known as the Bureau of Standards). These are the weights used to certify all commercial trade scales, including those used at a farmers' market or roadside stand.

Direct sales, which may occur at a farmers' market, roadside stand or pickup, are those where the weight of the product is determined at the time of the sale. For example, when a customer tells the seller he wants "two pounds of those potatoes," the seller places potatoes on the scale until it reads two pounds. This scale is being used for direct sales. **Scales used in direct sales must be registered and certified by the Division of Nebraska Weights and Measures of the Nebraska Department of Agriculture (NDA).** To be certified, the scales must be designed for commercial use. Not all scales can be certified. Almost all home postal scales, baby scales, diet scales, or other portion-type scales were not manufactured to meet the standards necessary for commercial trade and certification. It doesn't matter if it is an analog or digital scale. It doesn't matter if it will give you a weight of 0.01 gram or a fraction of an ounce. Many scales available at office supply stores cannot be certified for legal trade. Scales for direct sales in commercial trade must meet certain standards, be registered with the NDA, and be certified yearly as accurate. A stamp is placed on the scale indicating it is certified. It is illegal to sell by weight using an uncertified scale. Direct sales by weight or measure also are called bulk sales by weight or measure.

If purchasing a scale, new or used, get the make and model number and call Weights and Measures before you buy it to

be certain it can be certified. Certifiable used scales may be available at a reasonable cost, as many grocery stores replace older models of scales for electronic scanners and scales. *If you have any questions or want to know if your scale can be certified, write down the name and model number of your scale and call the NDA Division of Weights and Measures, (402) 471-4292.* The Division of Weights and Measures also can provide detailed instructions on what you need to do, and offer suggestions on how to stay within the law if you don't want to use a scale.

Prepackaged produce sales occur when you weigh the product and package the product with a quantity statement on the package before the time of sale. A 5-pound bag of potatoes, 2-pound bag of green beans, or a 12-count package of dinner rolls are examples of prepackaged sales. Scales used for prepackaging products do not have to meet the requirements of the Nebraska Weights and Measures Act. However, the package must contain at least the weight specified on the package. The Weights and Measures inspector's job in this case is to check the weight of the *package* for accuracy, not the scale. As long as the contents of the package weigh at least what it is labeled, it is in compliance. However, if you prepackage, there are legal requirements for what must be on the label. All prepackaged products — that is, all products packaged by weight, measure, or count prior to sale — must have an individual label that gives: 1) the name of the product if it cannot be easily identified through the wrapper; and 2) a quantity statement (weight, measure, or count). Weight statements 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 the 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 weights 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 more. The lot would be rejected if the average of the weights was under 2 pounds on a **calibrated, certified scale**. Remember, fruits and vegetables will lose water weight after being harvested. The weight of a bag of carrots packaged Tuesday won't be the same by Saturday's market. In this case, you do need to determine how much weight is lost over the time period (under a consistent set of 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 Measure

A standard dry pint or dry quart container is actually measured by the cubic inches it contains, not the shape. A quart is 67.2 cubic inches. A pint is half that amount. A bushel contains 2150.42 cubic inches. 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. Some settling also can occur in transit. The contents must be level with the top of the container at the time of sale. It is recommended growers overfill containers slightly to allow for these two factors. Most items sold by measure at a farmers' market will be sold by dry measure, described above. 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 a fluid, determine exactly how full the container must be to hold the full, accurate fluid measure.

Dry Measure

One bushel = 2150.42 cu. in.
 1/2 bushel = 1075.21 cu. in.
 1/4 bushel = 537.60 cu. in.
 One dry quart = 67.20 cu. in.
 One dry pint = 33.60 cu. in.

Liquid Measure

One gallon = 231 cu. in.
 One quarter = 57.75 cu. in.
 One pint = 28.875 cu. in.
 One cup = 14.435 cu. in.

Both categories are measured in cubic inches.

Fees

To have a scale certified by Nebraska Weights and Measures requires a one-time registration fee of \$5 plus a yearly fee to certify the scale. The yearly fees for scales most frequently used at farmers' markets or at direct markets such as roadside stands range from \$13.64 to \$40.93. For the specific fee for your scale contact the Weights and Measures office at the number below. The fees are due in July.

For additional information or specific advice on scales or appropriate and legal methods of sale, contact the Nebraska Department of Agriculture, Division of Weights and Measures, P. O. Box 94757, Lincoln, NE 68509-4757, or phone: (402) 471-4292.

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