

COLORADO DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

RULES FOR THE METHOD OF SALE OF RETAIL COMMODITIES

8 CCR 1202-14

Part 1. Scope of Rules

These rules apply to the retail sale of commodities as described herein.

Part 2. Unit Price Advertising of Bulk Food Commodities

The price of food commodities sold from bulk by weight shall be advertised or displayed in terms of whole weight units of kilograms or pounds only, not in common or decimal fractions or in ounces. A supplemental declaration is permitted in print no larger than the whole unit price. This supplemental declaration may be expressed in common or decimal fractions or in ounces.

Part 3. Meat, Poultry, Fish, and Seafood

- 3.1. Meat, poultry fish and seafood, shall be sold by weight, except that shellfish in the shell may be sold by weight, measure, and/or count. Shellfish are aquatic animals having a shell, such as mollusks (e.g. scallops) or crustaceans (e.g. lobster or shrimp).
- 3.2. When meat, poultry, fish, or seafood are 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 and a quantity representation need not be made for each element provided a statement listing the ingredients in order of their predominance by weight appears on the label.
- 3.3. Whole clams, mussels, oysters, and other mollusks in the shell (fresh or frozen) shall be sold by weight (including the weight of the shell, but not including the liquid or ice packed with them), dry measure (e.g., bushel), and/or count. In addition, size designations may be provided.
 - 3.3.1. Whole clams, oysters, mussels, or other mollusks on the half shell (fresh, cooked, smoked, or frozen, with or without sauces or spices added) shall be sold by weight (excluding the weight of the shell) and/or by count. Size designations may also be provided.
 - 3.3.2. Fresh oysters removed from the shell shall be sold by weight, drained weight, or by fluid volume. For oysters sold by weight or by volume, a maximum of 15 % free liquid by weight is permitted.
 - 3.3.3. Processed clams, mussels, oysters, or other mollusks on the half shell (fresh or frozen) shall be sold by net weight excluding the weight of the shell. The term

“processed” means removing the meat from the shell and chopping it or cutting it or commingling it with other solid foods.

Part 4. Ready-to-Eat Food

Ready-to-eat food is food offered or exposed for sale, whether in restaurants, supermarkets, or other food service establishments, that is ready for immediate consumption, and is sold from bulk or in single servings packed on the premises. Such food may be sold by weight, measure, or count (count includes servings). Ready-to-eat food does not include sliced luncheon products, such as meat, poultry, or cheese when sold separately.

Part 5. Fireplace and Stove Wood

5.1. For the purpose of this regulation, this section shall apply to the sale of all wood, natural and processed, for use as fuel or flavoring.

5.2. Definitions:

5.2.1. Fireplace and stove wood: any kindling, logs, boards, timbers, or other wood, natural or processed, split or not split, advertised, offered for sale, or sold for use as fuel or flavoring.

5.2.2. Cord: the amount of wood that is contained in a space of 128 ft³ when the wood is ranked and well stowed. For the purpose of this regulation, “ranked and well stowed” shall be construed to mean 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.

5.2.3. Representation: any advertisement, offering, invoice, or the like that pertains to the sale of fireplace or stove wood.

5.3. Identity: a representation may include a declaration of identity that indicates the species group (for example, 50% hickory, 50% miscellaneous softwood). Such a representation shall indicate, within 10% accuracy, the percentages of each group.

5.4. Quantity: fireplace and stove wood shall be advertised, offered for sale, and sold only by measure, using the term “cord” and fractional parts of a cord or the cubic meter, except that:

5.4.1. Natural wood offered for sale in packaged form in quantities less than 0.45 m³ (1/8 cord or 16 ft³) shall display the quantity in terms of:

5.4.1.1. liters, to include fractions of liters; or

5.4.1.2. cubic inches, if less than one cubic foot; or

5.4.1.3. cubic feet, if one cubic foot or greater, to include fractions of a cubic foot.

- 5.4.2. A single artificial compressed or processed fireplace log shall be sold by weight, and packages of such individual logs shall be sold by weight plus count.
- 5.4.3. Stove wood pellets or chips not greater than 15 cm (6 in) in any dimension shall be sold by weight or volume.
- 5.5. 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 or flavoring.

Part 6. Container Plants

- 6.1. Definition: “container plant” means any plant, including herbs, vegetables, trees, shrubs, fruit bearing plant, or ornamental plant packaged in a container and advertised, offered or exposed for retail sale to a consumer.
- 6.2. Method of sale: container plants shall be sold by volume stated in terms of liters, gallons, or fractions thereof, or by a linear measure. The linear measure shall be obtained from the inside diameter of the top of the container. The above mentioned declarations of quantity shall be labeled on the package in accordance with 8 CCR 1202-1.

Parts 7 – 8. Reserved

Part 9. Statements of Basis, Specific Statutory Authority and Purpose

9.1. Adopted June 11, 2014 – Effective July 30, 2014

STATUTORY AUTHORITY:

The Commissioner of Agriculture, is authorized to adopt these permanent rules pursuant to Section 35-14-107(1)(o), C.R.S.

PURPOSE:

The specific purposes of these Rules are as follows:

- 1. Create a new Part 1 that defines the scope of these Rules. These Rules apply to the retail sale of certain commodities.
- 2. Create a new Part 2 that clarifies unit price advertising requirements for bulk food commodities.
- 3. Create a new Part 3 that establishes the method of sale for meat, poultry, fish and seafood.
- 4. Create a new Part 4 that defines and establishes a method of sale for ready-to-eat food.

This copy of the text of the rules and regulations for “Rules for the Method of Sale of Retail Commodities” is provided as a convenience to the public by the Colorado Department of Agriculture and does not constitute an official publication of these Rules. The official version of these Rules is published by the Office of the Secretary of State in the Colorado Code of Regulations at 8 CCR 1202-14 and may be obtained from the following website: <http://www.sos.state.co.us/CCR/Welcome.do>.

5. Create a new Part 5 that defines and establishes a method of sale for fireplace and stove wood.
6. Create a new Part 6 that defines and establishes a method of sale for container plants.

FACTUAL AND POLICY ISSUES:

1. These method of sale Rules for specific commodities are being promulgated in an effort to provide the consumer a means of making an informed purchasing decision by enabling them to make a value comparison between commodities. The language in Parts 2-5 of these Rules is taken from the National Model Law Method of Sale for Commodities in NIST Handbook 130, 2014 ed. The language in these Rules is thus in alignment with the method of sale model law which is followed by all other weights and measures jurisdictions nationally.
2. Part 2 of these Rules clarifies that unit price advertising for bulk food commodities must be represented in the largest whole unit. While much of the industry already complies with this, there are market categories that sell/advertise food products in fractional quantities, thereby making it difficult for the consumer to facilitate a value comparison. These Rules, therefore, would eliminate such confusion by requiring that unit price advertising is done using whole units and not fractions thereof.
3. During 2008-09 the Department of Regulatory Agencies performed a Sunset Review of the Colorado Measurement Standards Act. During this process Section 35-14-113 C.R.S., which addressed the method of sale for meat, poultry and seafood, was repealed. Part 3 clarifies that meat, poultry and seafood must be sold by weight or in the case of shellfish sold in the shell, by weight, measure or count.
4. Ready-to-eat foods are often sold without a quantity declaration, making it hard for a consumer to know how much they are getting, or to facilitate a value comparison. Part 4 clarifies that ready-to-eat foods must declare a weight, measure or count when sold.
5. To date, there is no method of sale rule for firewood in Colorado. Current advertising terms and quantity declarations used by industry are often misleading, and fail to provide enough information to the consumer. This makes it difficult for the consumer to make an informed decision or value comparison when making a purchasing decision. Part 5 was written to protect the consumer from deceptive advertising and sales practices.
6. Representatives in the nursery/greenhouse industry expressed concern to the Department that quantity statements made by some sellers of container plants were deceptive and misleading. They asked the Department for increased enforcement of their method of sale. Part 6 was developed with the help of industry stakeholders to define what a container plant is and establish a

consistent method of sale to eliminate deceptive and confusing methods of sale for container plants.

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