



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

December 28, 2017

DMS NOTICE
WM – 17 – 01/QC – 17 – 04
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Online Grocery Sales and Home Delivery/Curbside Pickup

The California Division of Measurement Standards (DMS) has received several inquiries regarding the legal requirements for groceries that are purchased online and delivered to the buyer when they arrive at a designated location in front of the grocery store or delivered to the buyer's home. More specifically, what are the labeling requirements of bulk commodities such as fresh fruits, vegetables, or other dry goods that are generally sold from bulk containers or displays that are placed in a bag or container by a store employee in advance of pick-up or delivery, and where the purchaser is not present?

In these circumstances, the retailer has several options.

Option 1. License as a weighmaster- this includes registering the principal location and each branch location (store); putting as a deputy weighmaster each staff person who is involved in weighing and packaging of items and putting together the online purchase where this service is provided; documenting the purchase on a weighmaster certificate; and as this is a commercial purpose, the business is required to register their device with the county weights and measures office, test and seal the device or devices used in the weighing or measuring process, and pay all appropriate fees.

California Business and Professions Code (BPC) Section 12701 lists persons who are not weighmasters and subsection (a) includes, "Retailers weighing, measuring, or counting commodities for sale by them in retail stores in the presence of, and directly to, consumers." However, because the customer is not present at the time the product is weighed, the store is not exempt from licensing as a weighmaster unless the packaged goods meet packaging and labeling requirements.

Option 2. Label each package of bulk commodities in compliance with the National Institute of Standards and Technology Handbook 130, Uniform Packaging and Labeling Regulation (UPLR), as adopted pursuant to BPC Section 12609. With this option the store has two choices:



(A) The store may label the commodity with a random weight label that includes the weight, price per unit, and total price (California Code of Regulations (CCR) 4510, Article 2, Section 11. Exemptions, 11.1. Random Packages), or

(B) The store may label the product by weight and meet the additional requirements for Indirect Sale of Random Packages (CCR 4510, Article 2, Section 11. Exemptions, 11.1.1. Indirect Sale of Random Packages).

“11.1.1. Indirect Sale of Random Packages. – A random package manufactured or produced and offered for indirect sale (e.g., e-commerce, online, phone, fax, catalog, and similar methods) shall be exempt from the labeling requirements of:

- (a) unit price*
- (b) total price*

when the following requirements are met:

At the time of the delivery, each package need only bear a statement of net weight, provided that:

- (a) the unit price is set forth and established in the initial product offering;*
- (b) the maximum possible net weight, unit price, and maximum possible price are provided to the customer by order confirmation when the product is ordered; and*
- (c) when the product is delivered, the customer receives a receipt bearing the following information: identity, declared net weight, unit price, and the total price.*

Indirect Sales: For the purpose of Section 11.1.1. Indirect Sale of Random Packages, indirect sales are sales where the customer makes a selection and places an order, but cannot be present when the determination of the net quantity is made. Examples of such indirect methods include, without limitation, Internet or online sales, sales conducted by telephone or facsimile, and catalog sales.”

If a store chooses Option 2.(B), county weights and measures officials should review the store's online advertising to determine compliance with conditions (a), (b), and (c) set forth in UPLR Section 11.1.1. Indirect Sale of Random Packages. The net weight label for the product can be printed and attached to the product by any means provided it is clear and legible and the labeling is exempt from size and location requirements as this is a subsection of the random weight label. Using a sticker, twist tie, or placing the label in the produce bag with the product would be acceptable; however, a packing list or loose cards in the master container stating weights are not acceptable to designate

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the net weight statements as the exclusion states that the “package... bear a statement of net weight.”

In a circumstance where a third party provides the service for an Indirect Sale, and the grocery store is only a source for the purchase, the third party, is responsible for fulfilling the weights and measures requirements for the transaction. If the grocery store does the packaging for a third party and controls the product selection, packaging, and weighing process, they have control over labeling and would be responsible for compliance with weights and measures requirements.

If you have any questions, please contact Katherine de Contreras, Supervising Special Investigator, DMS Enforcement Branch at (916) 229-3000, or katherine.decontreras@cdfa.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Kristin Macey". The signature is written in a cursive style with a large initial "K".

Kristin Macey
Director

cc: Gary Leslie, County/State Liaison, CDFAs