

Ministry of Consumer Affairs Guidelines for Packing, Storage, Sale and Monitoring of Packaged Goods

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Introduction

The Weights and Measures Act 1987 and associated regulations set out the rules for selling goods by quantity (weight, measure, number). The Measurement and Product Safety Service (MAPSS), Ministry of Consumer Affairs (“the Ministry”) enforces these rules.

There are a wide range of legal requirements that need to be taken into consideration when exposing for sale and selling both packaged and non pre-packaged goods.

The information below sets out many of the legal requirements in relation to the application of the Weights and Measures Act 1987 and regulations 1999. However these guidelines are only intended as a general overview and for a complete interpretation of the legal requirements you should refer to the legislation, seek legal advice or may need to consult the NZRA or MAPSS.

Weighing or Measuring Equipment

All weighing and measuring equipment used for selling goods by quantity must be of an approved type, if unsure ask the Ministry about this (see contact details below).

Equipment must be verified by either a MAPSS Officer or Accredited Person (AP). The verification mark can be either a crown or the letters “AP” followed by a number on a seal or sticker. Remember, check the seal/sticker is still intact after repairs have been made.

Regularly check the level bubble on weighing equipment, to ensure the equipment is level. Equipment can be inaccurate if it is not level. The user must also check that the indicator is reading zero before using the weighing equipment.

Goods Weighed in Front of Customers

When goods are weighed in front of the customer, they must be able to see the actual weighing and the indicated weight.

Where selling packaged goods or loose goods which are placed into containers, e.g. deli pottles, the weight of all packaging must be deducted from the quantity charged for.

Packaged Goods

“Metric System”

All packaged goods must be sold by net quantity (weight of all packaging material excluded).

The units of measurement that the goods are to be sold by must be in units of the metric system, for goods sold by:

- Weight, *kilograms, grams or milligrams.*
- Liquid Measure, *litres, decilitres, centilitres or millilitres.*
- Measures of Length, *metres, centimetres or millimetres*

Only one unit of weight or measure can be used and decimals are to be used to express parts of any unit, e.g. 1.5 kg.

“Position, Style and Form of Marking”

- The marking should be in a prominent position and in close proximity to the name or description of the goods.
- The marking should be written or printed in letters and figures at least 2 mm in height and in a colour that contrasts distinctly with the background.
- However if, due to the size of the goods or the package in which the goods are packed, it is not possible to use letters and figures of at least 2 mm, the marking may be in smaller letters and figures, but sufficiently large to be clear and legible.
- The marking should be in the form of one of the following examples;
 - Net Weight 1.5 kg
 - Net 1.5 kg
 - 1.5 kg
 - Net Measure 1.5 L
 - Net 1.5 L
 - 1.5 L
- A period or the letter “s” should not be used after the symbol.
- These requirements apply whether the weight or measure is marked on the goods themselves, on the package in which the goods are packed, or on a label attached to the goods or package.

Specific Requirements for Packaging Food Items

Every package of food must be marked with a statement of quantity. Regulation 79A of the Weights and Measures Regulations 1999 contains the general requirement that every package of food must be marked with a statement of quantity in the form of net weight, volume or number of the contents in a package, whichever is the most appropriate for the sale of the item concerned.

“Exemptions”

The following are exempt from the requirements to mark a statement of quantity;

- Packages of food not intended for retail sale.
- Items of confectionary or chocolate less than 15 g or 15 ml or single novelty items or single Easter eggs.
- Packages of food ordinarily sold by number where there are not more than 8 single items contained in a transparent wrapping if the contents can be clearly seen and counted by the prospective purchaser.
- Raw fruit or vegetables that immediately after they are picked, are packed in a package intended for retail sale in units no greater than 500 g.
- Packaged sandwiches, filled rolls, hamburgers, takeaways and similar packaged food intended for immediate consumption.
- Any package of food requested by the purchaser and the purchaser is present when the seller weighs, counts or measure the package or when the purchaser is

- present when the seller packages the food and weighs, counts or measures the package.
- Food sold at fund-raising event.

Packaged Goods - Average Quantity System (AQS)

Packaged goods must be sold by net quantity. That means all packaging must be excluded from the quantity charged for.

Most packaged goods are checked by MAPSS officers using the “Average Quantity System (AQS)” to ensure packages contain their stated amount. The system is designed to give consumers an assurance that goods packed by weight, measure or number are, on average, correct. The system also increases efficiency for packers because it takes into account minor variations in the packaging processes and reduces the need for over filling to ensure compliance.

AQS applies to packaged goods that are of the same kind, the same stated quantity, and available for inspection at the same time and place. E.g. 500 g packs of butter. The AQS under the Weights and Measures Act 1987 and regulations 1999, is a “statistical model” designed for MAPSS officers for the sole purpose of determining compliance of packaged goods once they have been produced and are ready for despatch to wholesale or retail outlets.

Important Note:

The AQS model in the legislation is not a statistical model for packers to pack to. Packers should develop their own statistical model (sampling plans) for the sole purpose of ensuring that production runs of packaged goods meet the quantity statement as shown on the individual package.

Packers who use the AQS criteria in their production processes as prescribed in the Weights and Measures legislation run the risk of packing under weight/measure product.

Packaged Goods - Catch weight

Goods that are not of the same kind and the same stated quantity e.g. random pack meat trays or joints of meat, are not covered by AQS. They are tested as individual packs, known as “catch weight goods”

Retailers Responsibility for Monitoring and Checking Packaged Goods, Stored and Exposed for Sale

The Ministry appreciates and understands the complex issues around handling, advertising and selling the varied and large amounts of products that are processed through the average retail chain.

We understand that it is not realistic for many retailers e.g. supermarkets, to keep track (monitor/check) every single product line in terms of compliance with the Weights and Measures legislation.

However, there still needs to be a certain amount of compliance checks and due diligence completed on a regular basis to ensure both in-house brands and goods packed on-site comply with the legislative requirements.

These checks should be scheduled on a regular basis and focus on both the marking requirements and quantity of the goods concerned. Goods that fail in-house inspection

checks should be removed from sale and either repacked or returned to the supplier (In-house brand packing contractor)

Third Party Supplied Goods – Importer / Manufacturer / Wholesaler

Goods which are supplied by “third party suppliers” - manufacturers, importers or wholesalers, do not need to be checked by supermarket chains in order to determine compliance with the Weights and Measures legislation. Provided that the handling, storage and exposure for sale of the goods, once in the custody of the retailer, is done so in a manner that protects and preserves the integrity of the goods by ensuring they are still in the same condition as they were intended to be sold.

Examples of circumstances where “third party suppliers” goods may need to be monitored are:

- Perishable goods where they are past their “best before” or “use by date”.
- Desiccating goods where they fall outside of the “7 Day Rule”.
- Frozen products that are not kept in accordance with packers / manufacturers chill or freeze down specification.
- Volume liquid goods where it is clear that leakage has occurred.

Where as a result of finding non-compliant “third party” supplied goods either through a customer complaint or any other means, the appropriate action should be to either notify the supplier (wholesaler, importer, packer etc...) or MAPSS to investigate and take follow up action. The most effective action will usually be determined by the initial response received from the “third party” supplier upon notifying them of the non-compliance.

MAPSS Enforcement Policy

Although the Weights and Measures Act 1987 can lay liability upon a retailer where “third party” supplied goods are found not to comply with the requirements of the legislation, it is not the intention of the Ministry to pursue such action under normal circumstances, other than where it is clear that the non compliant goods have become so, as a direct result of the retailers “action” or “lack of action”.

In addition to this where; “third party supplier” goods are found not to comply with the requirements of the legislation and the retailer (supermarket) in question has taken all reasonable steps to ensure the goods have been handled, stored and exposed for sale in an appropriate manner. And they have fully co-operated with the Ministry whilst carrying out their investigation to determine the cause of non compliance. This may include; providing evidence of the supply chain source and copies of documents proving the sale, then their liability for any alleged offence in relation to non-compliant goods will be mitigated.

Where MAPSS Officers find non-compliant goods at a retail outlet and instructed the outlet in question to remove the goods from sale and return to the supplier, the officer will either issue the retailer with a “general advice notice” outlining the details of the non-compliant goods and that they have been instructed to remove the goods from sale. Or if deemed necessary seize the goods and issue a “seizure notice”. In both instances the retailer should use this documentation in order to notify the supplier that a credit for the returned goods needs to be actioned.

Enforcement Activities

There are a number of core activities that MAPSS Officers carry out when visiting retail outlets:

1. Testing equipment to ensure compliance with the legislation and conditions of Approval Certificates.
2. Conducting surveillance audits on Accredited Persons, to ensure they are following the conditions of their accreditation.
3. Inspecting catch-weight goods.
4. Conducting AQS – sample assessment / reference tests.

Application of AQS

Sample assessments are usually conducted at retail outlets in order to determine initial compliance and gain access to a wide variety of product lines at one central location. In cases where goods tested fail a sample assessment, a reference test is then conducted at the point of supply or if sufficient goods are available in storage at the retail outlet, then the reference test may be conducted onsite.

Warning letters and Infringement Offence Notices

Where non-compliant “third party” supplied goods are found at the retail outlet and the reason for the non-compliance is not due to the “action” or “lack of action” of the retailer i.e. the retailer in question has taken all reasonable steps to ensure the goods have been handled, stored and exposed for sale in an appropriate manner then the retailer will not be held liable and will not be issued with warning letters and/or infringement offence notices.

MAPSS decisions on enforcement action will take into consideration Crown Law Prosecution Guidelines: <http://www.crownlaw.govt.nz/uploads/prosecutionguidelines.pdf>

Suggestions for Ensuring Legal Compliance

1. Contact an Accredited Person to test equipment used for weighing or measuring goods. The Ministry can provide contact details of Accredited Persons who can carry out the work you need.
2. An Accredited Person is a company or an individual who has been approved by the Ministry to test weighing and measuring equipment in compliance with the Weights and Measures legislation. They can issue on request a certificate of accuracy, which is valid for 12 months from the date of issue. A current certificate of accuracy will assure consumers that weighing or measuring equipment has been independently tested and complies with the requirements of the legislation.
3. Keep certificates of accuracy up-to-date, this may provide a defence in certain circumstances if it is found that the equipment does not comply with the legislation.
4. Regularly check the net weight or measure of in-house packed goods.
Note: Pre-packaged goods labelled “packed for xyz”, “manufactured for xyz”, “distributed by xyz”, “marketed by xyz”, “imported by xyz”, “sold by xyz” or similar wording (where xyz represents your company name) should be treated as in-house goods.
5. Remove any incorrectly weighed or measured goods from sale and isolate them from other stock.
6. Report the incidence of any incorrectly weighed goods to the person / department / contractor responsible for the packing of the goods, to ensure corrective action is taken to prevent any reoccurrence.

7. Ensure that all “third party supplied” goods are handled, stored and exposed for sale in a manner that protects and preserves the integrity of the goods ensuring they are still in the same condition as they were intended to be sold.
8. Implement a checking system that includes; the maintenance of adequate records and the monitoring and review of such records by management.

Disclaimer

The guidelines and suggestions in this document are those of the Ministry of Consumer Affairs and do not reflect government policy.

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Contact Details:

Ministry of Consumer Affairs
Measurement and Product Safety Service
PO Box 1473
Wellington

Phone 0508 MAPSSInfo
0508 627 774
Fax 03 962 6196

<http://www.consumeraffairs.govt.nz/>

Link to Weights and Measures Act 1987:

<http://www.legislation.govt.nz/act/public/1987/0015/latest/DLM102242.html>

Link to Weights and Measures Regulations 1999:

<http://www.legislation.govt.nz/regulation/public/1999/0373/latest/DLM301528.html>