

Regulatory Requirements for Fruits and Vegetables

By Tom Coleman

Questions have been raised by packers/shippers regarding product (i.e., berries, small fruits, vegetables) being exposed and offered for sale in clear* polyethylene bags. Industry and regulatory officials have requested guidance concerning packaging and labeling requirements and method of sale for product offered for sale in this manner. To assist weights and measures officials and industry in their interpretation of the packaging and labeling regulations, the following technical information is provided by the NIST WMD in conjunction with the Food & Drug Administration's (FDA) interpretation of the exemption described in 21 CFR Part 100. Such exemption applies to grapes and similar products (i.e., berries, small fruits, and vegetables) that fall under FDA jurisdiction and meet the same criteria that exempts them from requirements under section 403 (e)(2) of the act, which applies to product during introduction and movement in interstate commerce and while held for sale prior to the weighing process.

Retail Display – Polyethylene Produce Bags

In NIST Handbook 130, the Uniform Packaging and Labeling Regulation (UPLR) defines “package” as any commodity “enclosed in a container or wrapped in any manner in advance of wholesale or retail sale.” Product that is wrapped (open-ended) or enclosed commodities (fully wrapped) are considered to be in package form, which requires a label. We must then look at the options for labeling the package. UPLR provides several alternatives for “labeling” in Section 2.5. Label. This section provides several options. One requires the information to “appear on the package” (i.e., embossed, attached to, blown into, affixed to, etc.). Another option permits the information to be “adjacent to” the product, such as in the case of “signage.” It is this second option that WMD believes suffices as the label.

Further WMD believes that under Section 11. Exemptions, Section 11.26. also applies. Section 11.26., Commodities' Variable Weights and Sizes states that individual packaged commodities put up in variable weights and sizes for sale intact, and intended to be weighed and marked with the correct quantity statement prior to or at the point of retail sale, are exempt from the requirements of UPLR Section 6 Declaration of Quantity: Consumer Packages. The key to Section 11.26. is that the product may be weighed and marked “at the point of retail sale.” It is WMD's view (and one shared by the FDA) that the point of retail sale could be and is the check-out counter.

WMD's view is that Section 11.26. applies to this method of sale and would allow these “Commodities' Variable Weights and Sizes” to be exempt from Section 6. Declaration of Quantity. Therefore, products such as broccoli, bananas, and grapes to name a few, may be offered for sale in a closed or open polyethylene bag as long as the commodity is properly labeled (signage would suffice) and would be weighed and marked with the correct quantity statement at the point of sale (check-out-counter) via the store receipt. It must be further noted that under Section 11. Exemptions, Section 11.26. only exempts Commodities Variable Weights and Sizes from UPLR Section 6. Declaration of Quantity:

Consumer Packages. Declaration of Identity and Declaration of Responsibility would continue to apply.

* WMD believes that product identifiers attached to “clear” polyethylene bags, such as a product look up code (PLU) or a Universal Product Code (UPC), would be acceptable. These identifiers would serve the same purpose as “identifiers” currently applied directly to produce items.