

## CHAPTER 98

## WEIGHTS AND MEASURES

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**Cross Reference:** See definitions in 93.01.

**98.01 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Incorrect" as applied to weights and measures and commodities includes any failure to comply with the requirements of this chapter or rules issued thereunder.

(2) "Inspector" means a state inspector of weights and measures.

(3) "Municipality" means a city or village.

(4) "Sealer" and "deputy sealer" means a sealer of weights and measures and deputy sealer of weights and measures of a municipality, respectively.

(5) "Sell", "sale" and "sold" include barter or exchange, and any offering or exposing for sale or possession with intent to sell.

(6) "Weight" means net weight when used in reference to a commodity.

(7) "Weights and measures" means weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories used with any or all such instruments and devices, except meters for the measurement of electricity, gas (natural and manufactured) or water when the same are operated in a public utility system.

**History:** 1983 a. 189.

**98.02 Systems of weights and measures; special units. (1)**

The system of weights and measures in customary use in the United States or the metric system of weights and measures shall be the only systems used for commercial purposes in this state. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents, published by the national institute of standards and technology, shall govern weighing and measuring equipment and transactions in this state.

(2) The term "barrel", when used in connection with fermented malt beverages, means a unit of 31 gallons. The term "ton" means a unit of 2,000 pounds avoirdupois weight. The term "cord", when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

**History:** 1981 c. 79; 1989 a. 165.

**98.03 State standards; specifications and tolerances. (1)**

Weights and measures obtained by the state as standards and certified for use as such by the national institute of standards and technology shall be the state standards of weight and measure. They shall be in the custody of the department and shall be used only for verification of other standards.

(2) The department may issue rules governing the construction, installation and use of commercial weights and measures and prescribing tolerances therefor. The specifications, tolerances and regulations for commercial weighing and measuring devices issued by the national institute of standards and technology shall apply in this state except as modified by such rules.

**History:** 1989 a. 165.

**98.04 Municipalities. (1)** Each municipality having a population of more than 5,000, according to the latest federal census, shall enforce the provisions of this chapter within its jurisdiction. For this purpose it shall establish a municipal department of weights and measures. Each municipal department of weights and measures shall have such number of qualified sealers or inspectors as will ensure compliance with this chapter. Municipal sealers or inspectors shall have the same authority as sealers or inspectors of the department. The selection of municipal sealers or inspectors shall be from a list of applicants whose qualifications have been certified by the state or local civil service agency under the rules of the agency. Such municipality shall procure and keep at all times a complete set of standards of weight and measure conforming to the state standards, and such standards shall be submitted for certification at regular intervals as required by the department. It shall keep a complete record of its work and annually shall file a report thereof with the department. Municipalities may enact ordinances regulating weights and measures not in conflict with this chapter or the rules of the department and may assess fees which do not exceed the actual cost of the municipal weights and measures program.

(2) Nothing in this section shall prevent the department, at its discretion, from entering into contracts with municipalities in which it agrees to furnish the services and perform the duties of weights and measures departments in such municipalities. The authority and duties of the department in such municipalities shall be the same as the department of weights and measures, and such municipalities shall not be required to create such weights and measures departments. Under such contracts the department shall charge municipalities fees sufficient to cover the cost of services rendered.

**History:** 1983 a. 230.

**98.05 Enforcement authority; measurement center laboratory. (1)**

There is hereby conferred upon sealers and inspectors of weights and measures, police power; such sealers and inspectors shall be provided with suitable badges or insignia of authority and in the exercise of their functions shall exhibit the same, upon demand, to any person questioning their powers, and they are hereby empowered and authorized to

make arrests, with or without formal warrant, of any persons violating any statute relating to weights and measures.

(2) Sealers or inspectors may enter and go into or upon any structure or premises, and may stop any person or vehicle for the purpose of enforcing this chapter. They shall inspect and test any weights and measures or commodities which are sold or used commercially as often as necessary to secure compliance with this chapter, and may seize as evidence, or reject and mark or tag as "rejected" those which are incorrect. A representative sample may be used as the basis to determine whether any lot is incorrect.

(3) Weights and measures and commodities that have been rejected may be confiscated and destroyed by a sealer or inspector if not corrected within 30 days or such longer period as he may authorize, or if used or disposed of without his written authorization.

(4) Sealers or inspectors may seal or mark with appropriate devices such weights and measures as are found upon inspection and test to be in conformance with this chapter.

(5) The department shall:

(a) Establish and maintain a measurement center laboratory for the testing and calibration of weights and measures; and

(b) Fix and collect charges sufficient to cover the cost for the testing and calibration done in the measurement center laboratory, provided that state, county and municipal governments shall be exempt from these charges for verifications of weights and measures used in enforcement work.

**98.06 Method of sale of commodities.** (1) Commodities in liquid form shall be sold by liquid measure and commodities not in liquid form shall be sold by weight but liquid commodities may be sold by weight and commodities not in liquid form may be sold by count or measure if such methods are in general use and give accurate information as to the quantity of commodity sold.

(2) (a) Berries and small fruits may be sold by measure only if in containers having capacities of one-half dry pint, one dry pint or one dry quart.

(b) If a commodity is packaged in an aerosol container, it shall be sold by weight (including the propellant).

(3) This section shall not apply to commodities sold in compliance with a state or federal law which prescribes another method of sale, or to commodities sold for immediate consumption on the premises where sold.

**98.07 Declaration of quantity.** (1) No commodity which is marked, tagged or labeled, or for which a sign is displayed, with a selling price, shall be sold unless the weight, measure or count of the commodity is conspicuously declared on the commodity or its tag, label or sign, but a declaration of count is not required if the selling price is for a single unit, or a set or combination of commodities customarily sold to and understood by consumers as a single unit, or if the commodity is packaged prior to sale and the package contains 6 units or less which can be easily counted without opening the package.

(2) No commodity shall be wrapped or its container made, formed or filled so as to mislead the purchaser; nor shall the qualifying term "when packed", or the terms "jumbo", "giant" or "full", or words of similar import that tend to mislead the purchaser as to the amount of the commodity, be used in connection with a declaration of quantity.

(3) With respect to commodities packaged prior to sale, the department shall issue rules permitting reasonable variations from declared quantity which unavoidably occur in good packaging and distribution practices.

(4) In order to prevent consumer deception, the department shall prescribe, by rule, standards for determining and declaring weight, measure or count, including the conspicuousness of quantity declarations.

History: 1975 c. 308.

**98.12 Standard containers; frozen desserts.** Ice cream, ice milk, water ices or other frozen desserts of a similar nature packaged prior to sale may be sold by liquid measure only and shall be packaged only in containers with capacities of one-half liquid pint, one liquid pint, one liquid quart, or a multiple of one liquid quart. This section does not apply if such products are packaged at time of sale at retail or sold in quantities of less than one-half liquid pint.

History: 1973 c. 178; 1983 a. 367; 1987 a. 78.

**98.13 Milk or cream tests; samples; patrons' statement.**

(1) The Babcock or ether extraction tests shall be used to determine the milk fat content of milk or cream purchased by or sold to dairy plants, but the department may issue rules permitting the use of other methods or devices for testing and determining such milk fat content.

(2) Each sample used for testing shall be representative of the milk or cream from which taken. Composite samples shall consist of representative samples taken during a period not exceeding 16 consecutive days. The unused portion of tested samples shall be retained not less than 5 days after testing to enable retesting by the department.

(3) All purchasers of milk or cream from the producer, when using such milk fat tests to determine the value of any milk or cream received or bought by such purchaser, shall, when paying for such milk or cream, include an itemized statement to each patron showing the daily number of pounds of milk delivered, the total amount of butterfat content or test, transportation costs, and other charges and deductions for the period of time for which payment is made; except that the daily weights need not be shown on such statement if weight slips are furnished daily to producers.

(4) Whenever milk is sold under an agreement, express or implied, that the value of the same shall be determined by its proportion of butter fat, the price to be paid shall be based on a three and five-tenths per cent butter fat standard.

(5) To insure the accuracy of the milk fat tests prescribed herein the department shall issue rules governing the collection and care of samples, the conduct of tests and the keeping of test records.

**98.14 Standardization of Babcock pipettes.** (1) All bottles and pipettes used in measuring milk or milk products for making determination of the per cent of fat in said milk or milk products shall have clearly blown or otherwise permanently marked in the side of the bottle or pipette the word "Sealed," and in the side of the pipette or the side or bottom of the bottle the name, initials, or trademark of the manufacturer and his designating number, which designating number shall be different for each manufacturer and may be used in identifying bottles. The designating number shall be furnished by the department upon application by the manufacturer and upon the filing by the manufacturer of a bond in the sum of one thousand dollars with sureties to be approved by the attorney general, conditioned upon conformance with the requirements of this section. A record of the bonds furnished, the designating number, and to whom furnished, shall be kept in the office of the department.

(2) Any manufacturer who sells Babcock milk, cream or butter test bottles or milk pipettes, to be used in this state, that do not comply with the provisions of this section shall suffer the penalty of five hundred dollars to be recovered by

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89-90 Wis. Stats. 2068

the attorney general in an action against the offender's bondsmen, to be brought in the name of the people of the state. No dealer shall use, for the purpose of determining the per cent of milk fat in milk or milk products, any bottles or pipettes that do not comply with the provisions of this section relating thereto.

(3) The department shall prescribe specifications with which the glassware mentioned in this section shall comply. The unit of graduation for all Babcock glassware shall be the true cubic centimeter or the weight of one gram of distilled water at four degrees centigrade.

(4) Sealers of weights and measures are not required to seal Babcock milk, cream or butter test bottles or milk pipettes marked as in this section provided, but they shall from time to time make tests of individual bottles used by the various firms in the territory over which they have jurisdiction in order to ascertain whether the above provisions are being complied with and they shall report immediately to the department violations found.

**98.145 Licensing of milk and cream testers.** (1) To secure fair and accurate tests to producers and manufacturers for the determination of the basis of payment or for settlement for such milk or cream, or for the purpose of official inspection, or for the making of records of dairy production, persons making such milk fat tests shall be licensed by the department as herein provided.

(2) No person may engage as a tester of milk or cream to determine its value for payment or for the purpose of official inspection or for records of dairy production for the purposes described above unless the person holds a license issued by the department; but no such license is required of a licensed cheesemaker or buttermaker. The license shall expire biennially on October 31 of the 2nd year commencing after the date of issuance or renewal. Each application for milk tester license or renewal thereof shall be accompanied by a fee of \$50. Each application shall be made upon forms provided by the department. If the department conducts a reinspection of any milk or cream tested by a person licensed under this subsection due to any violation of any federal or state law which the department determines in a regularly scheduled inspection of milk or cream tested by that person, the department shall charge that person \$25 for that reinspection.

(3) To qualify for a milk and cream tester's license the applicant shall not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, shall furnish 2 references who have known the applicant for at least one year and shall give proof of ability to perform the necessary duties to the satisfaction of the department by satisfactorily passing a written examination pertaining to milk and cream sampling and care of samples and use of the Babcock test or other test method approved by the department; and by actual demonstration in the laboratory of his or her ability to determine accurately the milk fat content of milk and cream including special emphasis on the handling and testing of composite samples of milk and cream.

(4) Unless provision is made for the testing of milk or cream by a duly licensed tester as provided herein, no dairy plant shall receive any milk or cream unless at least one employee is a milk and cream tester licensee who shall be responsible for the care of samples and the testing of milk and cream and who shall be regularly assigned to the duty of making such tests.

(5) This section shall not be construed to require the licensing of city or village sanitary or dairy inspectors.

**History:** 1977 c. 216; 1981 c. 380; 1981 c. 391 s. 211; 1987 a. 27.

**98.146 Licensing milk weighers and samplers.** (1) All persons except licensed cheesemakers and buttermakers taking weights and samples of milk in bulk tanks or measuring milk in bulk tanks to determine weight, on the farm premises where such milk is produced, shall be licensed by the department under this section, and no person who is not so licensed shall engage in such activities.

(2) Each application for a license under this section or license renewal shall be made on forms provided by the department and shall be accompanied by a fee of \$30. The license shall expire biennially on September 30 of the 2nd year commencing after the date of issuance or renewal. The applicant shall not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, and shall give proof of ability to engage in such weighing and sampling to the satisfaction of the department by satisfactorily passing a written examination pertaining to such activities. Any person holding a tester's license under s. 98.145, or who is engaged in weighing and sampling milk in bulk tanks, either as an employe of a purchaser or receiver of milk in bulk tanks, or as the owner of a bulk tank truck and route, on August 21, 1957, shall be licensed under this section without examination if the person satisfies the department that he or she is qualified for the license. If the department conducts a reinspection of any measurement by a person licensed under this subsection due to any violation of any federal or state law which the department determines in a regularly scheduled inspection of that measurement, the department shall charge the holder of that license \$30 for that reinspection.

(3) No dairy plant shall receive any milk required to be weighed and sampled by a licensee under this section unless it has been so weighed and sampled.

**History:** 1977 c. 216; 1981 c. 380; 1981 c. 391 s. 211; 1987 a. 27.

**98.15 False testing.** (1) No person shall manipulate, under-read or overread or make any false determination by the Babcock test or any other test used for determining the value of milk or cream. No person shall make any false record or report of the results of any such test.

(2) A district attorney to whom any violation of this section is reported shall cause appropriate actions or proceedings to be instituted for the collection of a forfeiture or fine or for the enforcement of other remedies. In any enforcement action the court may, in addition to any other penalty provided, order restitution to any party injured by violation of this section. If the violator is convicted of a crime, restitution shall be in accordance with s. 973.20.

**History:** 1979 c. 264; 1987 a. 398.

**98.20 Installing and servicing weights and measures.** No person engaged in the business of installing, servicing or testing weights or measures may:

(1) Install or adjust a weight or measure so as to make the weight or measure incorrect, or cause the weight or measure to violate this chapter or rules promulgated under this chapter.

(2) Misrepresent that a weight or measure is correct.

**History:** 1987 a. 250.

**98.21 Bread, standard loaves.** (1) Except as provided in sub. (2), the weight of a loaf of bread manufactured, procured, made or kept for sale, offered for sale, or sold, for use or consumption within this state, shall be a multiple of 4 ounces and at least one-half pound avoirdupois weight. A variation or tolerance of one ounce in excess or one ounce in deficiency per pound from the weights provided for in this section shall be allowed in the weight of individual loaves of bread, but the average weight of at least 10 loaves of any one

size shall not be less than the standard weight prescribed in this section. If 10 loaves of the same approximate size are not available, then the weight of all available loaves shall be used to decide the average weight, but in no case shall said number be less than 5.

(2) The provisions of this section shall not apply to any of the following:

(a) Rolls, buns, biscuits, crackers and similar articles weighing less than 4 ounces avoirdupois each.

(b) Stale bread, provided that such bread be conspicuously marked "stale bread", or placed in a container conspicuously marked "stale bread", and sold as and for stale bread.

(c) Bread manufactured and sold for persons requiring special breads due to a medical condition.

(3) No person, firm or corporation, by himself, his servant or agent, or as the servant or agent of another person, firm or corporation, shall manufacture, procure, make or keep for sale, offer or expose for sale, or sell, bread in the form of loaves of weights other than provided for in sub. (1) and in excess of the tolerances provided for therein.

History: 1971 c. 113; 1983 a. 14, 329.

**98.22 Bulk deliveries sold in terms of weight and delivered by vehicle.** When a commodity in bulk is delivered by vehicle to an individual purchaser and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated in ink or by means of other indelible marking equipment: 1) the name and address of the vendor; 2) the name and address of the purchaser; and 3) the net weight of the delivery expressed in pounds, but where milk is picked up at farms, only the identity of the vendor and the net weight need be stated. If the net weight is derived from determination of gross and tare weights, such gross and tare weights also shall be stated in terms of pounds on the ticket. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand to the inspector or sealer, who, if he desires to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser. If the purchaser himself carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him. If the commodity is to be weighed by the purchaser, the purchaser shall furnish the vendor the duplicate delivery ticket provided for herein.

**98.245 Liquefied petroleum gas sales. (1) SALES EXCEPT BY UNITS OF MEASUREMENT PROHIBITED.** It is unlawful to sell or offer to sell at retail any liquefied petroleum gas except by avoirdupois weight, specified in pounds; liquid measure, specified in gallons; or vapor measure, specified in cubic feet, or such other units as may be approved by the department.

(2) **PACKAGES TO BEAR TARE WEIGHT.** When liquefied petroleum gas is sold or offered for sale at retail by weight, in portable containers, the tare weight of the container shall be plainly and conspicuously marked on the outside of the container. Tare weight shall not be construed to include the valve protecting cap, which shall be removed when weighing. It is unlawful to sell or offer or expose for sale liquefied petroleum gas in packages or containers which do not bear a statement as to tare weight as required by this section, or which packages or containers bear a false statement as to tare weight, provided packages intended to be used only once and clearly marked with the statement "not refillable" are exempt from this tare weight requirement.

(3) **REFILLING; CREDIT.** When liquefied petroleum gas is sold by the package or container, either by a refilling of a container or an exchange of containers, the vendor shall give the purchaser full credit for the unused liquid remaining in a container being exchanged or refilled.

(4) **CORRECTION TO TEMPERATURE OF VOLUME SOLD. (a)** When liquefied petroleum gas is sold or delivered to a consumer as a liquid and by liquid measurement the volume of liquid so sold and delivered shall be corrected to a temperature of 60 degrees Fahrenheit through use of an approved volume correction factor table, or through use of an approved meter with sealed automatic compensating mechanism. All sale tickets shall show the delivered gallons, the temperature at the time of delivery and the corrected gallonage, or shall state that temperature correction was automatically made. This section shall not apply to unit sales or deliveries made direct to mobile fuel tanks consisting of less than one hundred gallons.

(b) When liquefied petroleum gas is sold or delivered to a consumer in vapor form by vapor measurement, the volume of vapor so sold and delivered shall be corrected to a temperature of 60 degrees Fahrenheit through the use of an approved meter equipped with a sealed automatic temperature compensating mechanism. This paragraph shall apply to all meters installed for use in the vapor measurement of liquefied petroleum gas in vapor form after May 24, 1978. This paragraph does not prohibit the continued use of meters previously installed without a self-sealing automatic temperature compensating mechanism, but no such meter may be continued in use after January 1, 1986, unless brought into compliance with this paragraph.

(5) **SALES TICKETS TO SHOW QUANTITY SOLD.** Sales tickets or invoices shall show the quantity of liquefied petroleum gas sold, expressed in pounds, or gallons as set forth in sub. (4), or cubic feet, or other unit approved by the department. When vapor meters reading in approved units other than cubic feet are used, the invoice shall clearly indicate to the purchaser a factor to convert to cubic feet.

History: 1975 c. 308; 1977 c. 393.

**98.246 Petroleum product sales. (1)** In this section, "petroleum products" has the meaning given under s. 168.03.

(2) Petroleum products may not be sold from a terminal or storage facility in this state on any basis other than gross volume without correction for temperature.

History: 1983 a. 251.

**98.25 Vehicle scales: annual testing. (1)** The owner or operator of a scale with a weighing capacity of 5,000 pounds or more used for the commercial weighing of commodities shall cause the scales to be tested and inspected annually for accuracy by an independent scale testing or service company in accordance with specifications, tolerances, standards and procedures established by the national institute of standards and technology and the department for the testing and examination of scales, using test weights approved by the department. The annual tests and inspections shall be at the expense of the owner or operator.

(2) A scale testing or service company conducting a test under sub. (1) shall, at the time of testing and inspection, promptly furnish to the owner or operator of the scale a report showing the results of the test and inspection with an additional copy for the department. The owner and operator of a scale which is found to be inaccurate at the time of testing shall immediately withdraw the scale from further use until necessary corrections, adjustments or repairs are made and the scale is determined to be accurate by the scale testing or service company. A copy of the report prepared by the scale

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testing or service company shall be filed with the department by the owner or operator of the scale within 15 days after the test and inspection has been completed. The department shall maintain a list open for public inspection of all scales tested and found to be accurate on the annual test.

(3) No person may falsify a test or determination of the accuracy of a vehicle scale tested under sub. (1) or file with the department a false report of a test of a vehicle scale under sub. (1).

(4) This section does not apply to a railway scale used exclusively for the weighing of commodities on railroad track vehicles.

**History:** 1981 c. 20; 1989 a. 165.

**98.26 Prohibited acts; penalty; injunction. (1)** A person who does any of the following acts shall forfeit not less than \$100 nor more than \$500 for the first offense and not less than \$200 nor more than \$1,000 for a subsequent offense. A person who intentionally does any of the following acts shall be fined not more than \$10,000 or imprisoned not more than 9 months or both:

(a) Hinders, obstructs or impersonates a sealer or inspector.

(b) Uses or has in possession for use in buying or selling any commodity or service, or sells, any incorrect weight or measure or causes a weight or measure to be incorrect.

(c) Represents in any manner a false quantity in connection with the purchase or sale, or any advertising thereof, of any commodity, thing or service.

(d) Uses or disposes of any rejected weight or measure, or commodity, or removes therefrom any official tag, seal, stamp or mark, without written authority from a sealer or inspector.

(e) Violates s. 98.15 (1).

(f) Violates any other provision of this chapter or any rules promulgated under this chapter for which no specific penalty is prescribed.

(2) Upon application of the department or a municipality, a circuit court may grant a temporary or permanent injunction restraining any person from violating any provision of this chapter.

**History:** 1979 c. 264; 1987 a. 250.