

## CHAPTER 98

### WEIGHTS AND MEASURES

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**Cross-reference:** See definitions in s. 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) "Barrel," when used in connection with fermented malt beverages, means a unit of 31 gallons. "Ton" means a unit of 2,000 pounds avoirdupois weight. "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; 2015 a. 196.

**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 or by statute.

**History:** 1989 a. 165; 2017 a. 22.

**Cross-reference:** See also ch. ATCP 92, Wis. adm. code.

**98.04 Municipalities.** (1) Except as provided in sub. (2), a municipality having a population of more than 5,000, according to the most recent population estimate made by the department of administration under s. 16.96, shall enforce the provisions of this chapter within its jurisdiction. For this purpose, a municipality 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 of agriculture, trade and consumer protection. 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. The municipality shall procure and keep at all times a complete set of standards of weight and measure conforming to the state standards and shall submit the standards for certification at regular intervals as required by the department of agriculture, trade and consumer protection. The municipality shall keep a complete record of its work and annually shall file a report thereof with the department of agriculture, trade and consumer protection. The municipality may enact ordinances that regulate weights and measures and that are not in conflict with this chapter or the rules of the department of agriculture, trade and consumer protection. The municipality may assess fees that do not exceed the actual cost of its weights and measures program.

(2) A municipality that is required to establish a department of weights and measures under sub. (1) may contract with the department of agriculture, trade, and consumer protection to enforce the provisions of this chapter within the municipality's jurisdiction instead of establishing its own department if the department of agriculture, trade and consumer protection agrees to enter into such a contract. The department of agriculture, trade and consumer protection may charge the municipality fees sufficient to cover the department's costs under the contract. A municipality may recover an amount not to exceed the cost of these fees by assessing fees on the persons who receive services under the weights and measures program.

**History:** 1983 a. 230; 1997 a. 27; 1999 a. 9.

**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 the sealer or inspector may authorize, or if used or disposed of without the sealer’s or inspector’s 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.

**History:** 1993 a. 16, 492.

**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.

**History:** 1999 a. 83.

**Cross-reference:** See also ch. ATCP 91, Wis. adm. code.

**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.

**Cross-reference:** See also chs. ATCP 90, 91, and 92, Wis. adm. code.

**98.08 Price refunds; price information.** (1) A person who uses an electronic scanner to record the price of a commodity or thing and who sells the commodity or thing at a price higher than the posted or advertised price of that commodity or thing at least shall refund to a person who purchases the commodity or thing the difference between the posted or advertised price of the commodity or thing and the price charged at the time of sale.

(2) A person who sells a commodity or thing and who uses an electronic scanner to record the price of that commodity or thing shall display, in a conspicuous manner, a sign stating the requirements of sub. (1).

**History:** 1995 a. 319.

**98.12 Sale of ice cream and similar frozen products.**

Ice cream, ice milk, water ices or other frozen desserts of a similar nature packaged prior to sale shall be sold by liquid measure. This section does not apply if the 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; 1999 a. 9.

**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 milk shall be determined by its proportion of butter fat, the price to be paid shall be based on a 3.5 percent 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.

**History:** 1997 a. 253.

**98.14 Standardization of Babcock pipettes.** (1) All bottles and pipettes used in measuring milk or milk products to determine the percentage of fat in the 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 the manufacturer’s 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 \$1,000 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

nating 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, for use in this state, that do not comply with the provisions of this section shall be subject to a penalty of \$500 to be recovered by the attorney general in an action brought in the name of the people of the state against the offender's bondsmen. No dealer shall use, for the purpose of determining the percent of milk fat in milk or milk products, any bottles or pipettes that do not comply with the provisions of this section.

(3) The department shall prescribe specifications with which the glassware described 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 4 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.

**History:** 1993 a. 492; 1997 a. 253.

**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 butter-maker. 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, except that an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay the fee. 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; 2011 a. 209.

**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 the license fee required under sub. (4), except that an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay the fee. 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. 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 the reinspection fee required under sub. (4) 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.

(4) The department may establish by rule the amount of license or reinspection fees required under sub. (2). Unless otherwise established by department rule, a license fee under sub. (2) is \$40 and a reinspection fee under sub. (2) is \$40.

**History:** 1977 c. 216; 1981 c. 380; 1981 c. 391 s. 211; 1987 a. 27; 1991 a. 39; 2011 a. 209.

**98.15 False testing.** (1) No person shall manipulate, under-read or over-read 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.

Sub. (1) did not preclude prosecution for felony fraud under s. 943.20 (1) (d) when the state alleged that the defendant misrepresented the quality of milk sold. *State v. Ploekelman*, 2007 WI App 31, 299 Wis. 2d 251, 729 N.W.2d 784, 06–1180.

**98.16 Vehicle scale operators; scale installation and testing.** (1) **DEFINITIONS.** In this section "vehicle scale" means a commercial scale that is designed to weigh loaded or unloaded highway, farm or industrial vehicles, except that it does not include a scale that is operated exclusively by this state.

(2) **LICENSE FOR OPERATOR.** (am) Except as provided in par. (dm), no person may operate a vehicle scale without an annual license from the department. A separate license is required for each scale. A license is not transferable between persons or scales. A license expires on March 31 annually.

(bm) The department shall provide a license application form for persons applying for a license. The form shall require all of the following:

1. The applicant's correct legal name and business address and any trade name under which the applicant proposes to operate the vehicle scale.

2. A description of the nature and location of the vehicle scale.

3. Other information reasonably required by the department for licensing purposes.

(cm) A license application shall be accompanied by all of the following fees and surcharges:

1. A license fee in the amount specified by the department by rule promulgated under sub. (4).

2. A license fee surcharge, if the department determines that within one year prior to submitting the license application the applicant operated a vehicle scale without a license as required by par. (am). The license fee surcharge is \$200, except that the department may establish a different surcharge by rule promulgated under sub. (4). The department may not issue a license under this subsection to an operator if the operator has failed to pay a license fee surcharge assessed against the operator. Payment of the license fee surcharge does not relieve the applicant of any other civil or criminal liability for the operation of a vehicle scale without a license but shall not constitute evidence of violation of a law.

(dm) Paragraph (am) does not apply to a person who operates a vehicle scale only as an employee of a person who is required to hold a license to operate the scale under this subsection.

**(2m) PERMIT FOR SCALE INSTALLATION OR CONSTRUCTION; VARIANCE.** (a) No person may install or relocate a vehicle scale without a permit from the department. The department shall provide a permit application form for a person applying for a permit under this paragraph. An application for a permit under this paragraph shall be accompanied by a nonrefundable permit application fee in an amount established by the department by rule promulgated under sub. (4).

(b) A person who installs or relocates a vehicle scale shall comply with construction, operation, and maintenance standards and procedures established by the department by rule under sub. (4), except that the department may grant a variance from a construction standard if the department determines that the variance is justified by special circumstances. The department may impose conditions on the variance, including alternative construction standards, if the department determines the conditions are necessary. The department shall provide a variance application form for a person applying for a variance under this paragraph. An application for a variance under this paragraph shall be accompanied by a nonrefundable variance application fee in an amount established by the department by rule promulgated under sub. (4).

**(3m) ANNUAL TESTING.** (a) 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 at least annually for accuracy by a person licensed under s. 98.18 (1).

(b) A person conducting a test under par. (a) shall do all of the following:

1. Conduct the test and prepare a test report, according to rules promulgated by the department under sub. (4).

2. Provide a copy of the test report to the operator of the vehicle scale and, if required by rules promulgated by the department under sub. (4), to other persons.

(c) An operator of a vehicle scale shall file with the department a copy of each test report prepared regarding the vehicle scale not more than 15 days after the operator receives the test report. If an operator fails to file a report as required in this paragraph, the department may assess a testing surcharge against the operator. The department may not issue a license under sub. (2) to an operator if the operator has failed to pay a testing surcharge assessed against the operator. If an operator fails to pay a testing surcharge assessed against the operator within 120 days after the department assessed the surcharge, the department may revoke the operator's license to operate the vehicle scale for which the operator has been assessed the surcharge.

(d) If a test under this subsection shows that a vehicle scale is inaccurate, the scale may not be used until the inaccuracy is cor-

rected and the scale is determined to be accurate by a subsequent test under this subsection.

(e) No person may falsify a test, test result, or test report under this subsection.

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

**(4) RULES.** The department shall promulgate rules to regulate the construction, operation, testing, and maintenance of vehicle scales, including a rule specifying the amount of the fee under sub. (2) (cm) 1. The department may promulgate rules to adjust fees and surcharges under subs. (2) (cm) 2. and (2m) (a) and (b) and to impose a testing surcharge upon a vehicle scale operator if the operator fails to file a vehicle scale test report as required by a rule promulgated by the department under this subsection.

**History:** 1993 a. 16; 1997 a. 27; 1999 a. 9; 2009 a. 28 ss. 2038 to 2054, 2063 to 2067; 2011 a. 263.

**Cross-reference:** See also ch. ATCP 92, Wis. adm. code.

### 98.18 Installing and servicing weights and measures.

**(1) LICENSE REQUIRED.** (a) Except as provided in par. (bm), no person may engage in the business of installing, servicing, testing or calibrating weights and measures without a license from the department. A license expires on December 31 annually.

(bm) Paragraph (a) does not apply to any of the following:

1. A person who installs, services, tests or calibrates weights and measures only as an employee of a person who is required under par. (a) to hold a license to perform those services.

2. An inspector or metrologist employed by this state, a county or a municipality to test or calibrate weights and measures.

**(1d) LICENSE APPLICATION.** An applicant for a license issued under sub. (1) (a) shall apply on a form provided by the department. The applicant shall provide on the form information that is reasonably required by the department for issuing licenses under this section. The license application shall be accompanied by the applicable fees under subs. (1h) and (1p).

**(1h) LICENSE FEES.** Unless the department establishes different fees by rule, the following annual license fees shall apply:

(a) If the applicant solely engages in installing, servicing, testing or calibrating weights and measures that the applicant owns, the applicant for a license under sub. (1) (a) shall pay a license fee in the amount of \$100.

(b) If the applicant installs, services, tests or calibrates weights or measures for others, the applicant for a license under sub. (1) (a) shall pay all of the following:

1. A basic license fee of \$200.

2. A supplementary license fee of \$50 for each additional business location if the applicant operates from more than one business location.

**(1m) FEE EXEMPTION.** Notwithstanding sub. (1h), the department may not require an individual who is eligible for the veterans fee waiver program under s. 45.44 to pay a license fee.

**(1p) SURCHARGE FOR OPERATING WITHOUT A LICENSE.** An applicant for a license under sub. (1) (a) shall pay a license fee surcharge of \$200 in addition to the license fee if the department determines that within one year before making the application the applicant violated sub. (1) (a). Payment of this surcharge does not relieve the applicant of any other civil or criminal liability that the applicant may incur because of the violation of sub. (1) (a), but does not constitute evidence of violation of a law.

**(1t) LICENSE CONTINGENT ON FEE PAYMENT.** The department may not issue or renew a license under sub. (1) (a) unless the applicant pays all fees required under subs. (1h) and (1p) as set forth in a statement issued by the department. The department shall refund a fee paid under protest if the department determines that the fee was not required to be paid under this section.

**(2) RULES.** The department may promulgate rules to establish license fees under sub. (1h) and to regulate the installation, servic-

ing, testing and certification of weights and measures. The rules may include record-keeping and reporting requirements.

(3) **PROHIBITED PRACTICES.** A person who installs, services, tests or calibrates weights and measures may not do any of the following:

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

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

(c) Use any test weight or measure that has not been inspected, tested and approved by the department or by a laboratory certified by the national institute of standards and technology.

**History:** 1993 a. 16; 1997 a. 27; 2011 a. 209.

**98.21 Sale of bread.** (1) Except as provided in sub. (2), no person may manufacture for sale in this state, offer to sell or sell bread unless the bread is sold by weight.

(2) Subsection (1) does not apply to stale bread if the bread is conspicuously marked “stale bread” or is placed in a container conspicuously marked “stale bread” and sold as and for stale bread.

**History:** 1971 c. 113; 1983 a. 14, 329; 1993 a. 492; 1999 a. 9.

**98.22 Bulk deliveries sold in terms of weight and delivered by vehicle.** (1) 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:

(a) The name and address of the vendor.

(b) The name and address of the purchaser.

(c) The net weight of the delivery expressed in pounds.

(d) The gross and tare weights of the delivery if the net weight of the delivery is derived from determination of gross and tare weights.

(2) Where milk is picked up at farms, only the identity of the vendor and the net weight need be stated.

(3) One of the duplicate delivery tickets required under sub. (1) 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 may retain it as evidence and issue a weight slip in lieu thereof for delivery to the purchaser. If the purchaser carries away the 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 the purchaser. If the commodity is to be weighed by the purchaser, the purchaser shall furnish the vendor the duplicate delivery ticket provided for in this section.

**History:** 1993 a. 492; 1995 a. 225.

**98.224 Vehicle tank meters.** (1) **DEFINITION.** In this section, “vehicle tank meter” means a commercial meter used to measure liquid fuel, as defined in s. 98.225 (1).

(2) **OPERATOR LICENSED.** (a) Except as provided in par. (e), no person may operate a vehicle tank meter without an annual license from the department. An annual license expires on October 31. A separate license is required for each vehicle tank meter. A license is not transferable between persons or vehicle tank meters.

(b) To obtain a license under par. (a), a person shall submit an application on a form provided by the department. The application shall include all of the following:

1. The applicant’s correct legal name and business address, and any trade name under which the applicant proposes to operate the vehicle tank meter.

2. A description of the vehicle tank meter, including the serial number or other identifying marks that appear on the meter and the vehicle on which the meter is mounted.

3. The fees and surcharges required under par. (c).

4. Other relevant information reasonably required by the department for licensing purposes.

(c) An application under par. (b) shall include all of the following fees and surcharges:

1. A license fee established by the department by rule.

2. A surcharge established by the department by rule, if the department determines that within one year prior to submitting the application, the applicant operated the vehicle tank meter without a license required under par. (a). The department may not issue a license under this subsection to an operator if the operator has failed to pay a surcharge under this subdivision assessed against the operator.

3. A surcharge established by department rule if the department determines that, within one year prior to submitting the application, the applicant failed to comply with the reporting requirement under sub. (3). The department may not issue a license under this subsection to an operator if the operator has failed to pay a surcharge under this subdivision assessed against the operator.

4. Reinspection fees, if any, required under s. 98.255.

(d) Payment of a surcharge under par. (c) 2. or 3. does not relieve the applicant of any other civil or criminal liability for a law violation, but is not evidence of a violation of this section.

(e) Paragraph (a) does not apply to an individual who operates a vehicle tank meter only as an employee of a person who is required to hold a license under par. (a) to operate that vehicle tank meter.

(3) **TESTING AND REPORTING.** The operator of a vehicle tank meter shall have the meter tested for accuracy at least annually by a person who is licensed under s. 98.18 (1) to perform the testing. The operator, or the tester on behalf of the operator, shall report the results of each test to the department within 30 days after the testing is completed. The operator shall retain a test report for at least 3 years.

(4) **RULES.** (a) The department shall promulgate rules that establish all of the following:

1. License fee and surcharge amounts under sub. (2) (c).

2. Standards for the testing, reporting, and record keeping required under sub. (3).

(b) The department may promulgate rules that establish standards for the construction, operation, and maintenance of vehicle tank meters.

**History:** 2009 a. 28.

**98.225 Deliveries of certain liquid fuels.** (1) In this section, “liquid fuel” means gasoline, kerosene, fuel oil, diesel fuel or alternate fuels, as defined in s. 78.39 (1).

(2) No person may sell liquid fuel by liquid measure and deliver it by a vehicle equipped with a pump and metering device unless the pump and metering device is equipped with a delivery ticket printer. Except as provided in sub. (3), the seller shall, at the time of delivery, either provide a copy of the delivery ticket printed by the delivery ticket printer to the purchaser or leave a copy at the place of delivery. The delivery ticket shall contain all of the following information:

(a) The name and address of the seller.

(b) The name and address of the purchaser.

(c) A description of the liquid fuel delivered.

(d) The meter reading showing the volume of liquid fuel delivered.

(3) If there is a malfunction with the delivery ticket printer, the seller shall, at the time of delivery, either provide the purchaser or leave at the place of delivery the information required under sub. (2) in written form.

**History:** 1993 a. 234.

**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 a meter that is equipped with a sealed automatic compensating mechanism and that has been tested as required under sub. (8). 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.

(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 a meter that is 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. Subsection (8) does not apply to meters used to sell or deliver liquefied petroleum gas that are subject to 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.

**(6) PUMPS AND METERS.** (a) No person may sell liquefied petroleum gas and deliver it by a vehicle equipped with a pump and meter unless the meter is equipped with a delivery ticket printer and has been tested as required under sub. (8). Except as provided in par. (b), the seller shall, at the time of delivery, either provide a copy of the delivery ticket printed by the delivery ticket printer to the purchaser or leave a copy at the place of delivery. The delivery ticket shall contain all of the following information:

1. The name and address of the seller.
2. The name and address of the purchaser.
3. The meter reading showing the volume of liquefied petroleum gas delivered.

(b) If there is a malfunction with the delivery ticket printer, the seller shall, at the time of delivery, either provide the purchaser or

leave at the place of delivery the information required under par. (a) in written form.

**(7m) METER OPERATORS LICENSED.** (a) No person may operate a meter to determine the amount of liquefied petroleum gas sold or delivered under sub. (4) (a) unless the person holds an annual license from the department under this subsection. An annual license expires on November 30. A separate license is required for each liquefied petroleum gas meter. A license is not transferable between persons or meters.

(b) To obtain a license under par. (a), a person shall submit an application on a form provided by the department. The application shall include all of the following:

1. The applicant’s correct legal name and business address, and any trade name under which the applicant proposes to operate the liquefied petroleum gas meter.

2. A description of the liquefied petroleum gas meter, including the serial number or other identifying marks that appear on the meter, and if applicable, the vehicle on which the meter is mounted.

3. The fees and surcharges required under par. (c).

4. Other relevant information reasonably required by the department for licensing purposes.

(c) An application under par. (b) shall include the following fees and surcharges:

1. A license fee established by department rule.

2. A surcharge established by department rule, if the department determines that, within one year prior to submitting the application, the applicant operated the liquefied petroleum gas meter without a license required under par. (a). The department may not issue a license under this subsection to an operator if the operator has failed to pay a surcharge under this subdivision assessed against the operator.

3. A surcharge established by the department by rule if the department determines that, within one year prior to submitting the application, the applicant failed to comply with a test reporting requirement under sub. (8). The department may not issue a license under this subsection to an operator if the operator has failed to pay a surcharge under this subdivision assessed against the operator.

4. Reinspection fees, if any, required under s. 98.255.

(d) Payment of a surcharge under par. (c) 2. or 3. does not relieve the applicant of any other civil or criminal liability for a law violation, but is not evidence of a violation of this section.

(e) Paragraph (a) does not apply to an individual who operates a liquefied petroleum gas meter only as an employee of a person who is required to hold a license under par. (a) to operate that meter.

**(8) TESTING AND REPORTING.** A person that is required to hold a license under sub. (7m) to operate a liquefied petroleum gas meter shall have the meter tested for accuracy, at least annually, by a person who is licensed under s. 98.18 (1) to perform the test. The meter operator, or the tester on behalf of the meter operator, shall report the results of each test to the department within 30 days after the testing is completed. The operator shall retain a record of each test for at least 3 years.

**(9) RULES.** (a) The department shall promulgate rules that establish all of the following:

1. License fee and surcharge amounts under sub. (7m) (c).

2. Standards for the testing, reporting, and record keeping required under sub. (8).

(b) The department may promulgate rules that establish standards for the construction, operation, and maintenance of liquefied petroleum gas meters.

**History:** 1975 c. 308; 1977 c. 393; 1993 a. 234; 1995 a. 183; 1997 a. 27; 2009 a. 28.

**98.246 Petroleum product sales.** (1) In this section, “petroleum products” has the meaning given under s. 168.01 (3).

(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; 2013 a. 20.

**98.255 Reinspection; fee.** (1) If the department reinspects a weight or measure because the department has found a violation of this chapter or a rule promulgated under this chapter, the department may charge the operator of the weight or measure a reinspection fee.

(2) The department shall establish the amount of the reinspection fee under sub. (1) by rule and may establish different reinspection fees for different types of weights and measures. The amount of a reinspection fee for a weight or measure may not exceed the department’s average cost to reinspect that type of weight or measure.

(3) A reinspection fee under sub. (1) is payable after the reinspection is completed and is due upon written demand from the department. The department may issue a demand for payment when it issues an annual license application form to the operator of the weighing or measuring device.

**History:** 2009 a. 28.

**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 or price 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; 1995 a. 319.

**Cross-reference:** See also chs. ATCP 91 and 92, Wis. adm. code.