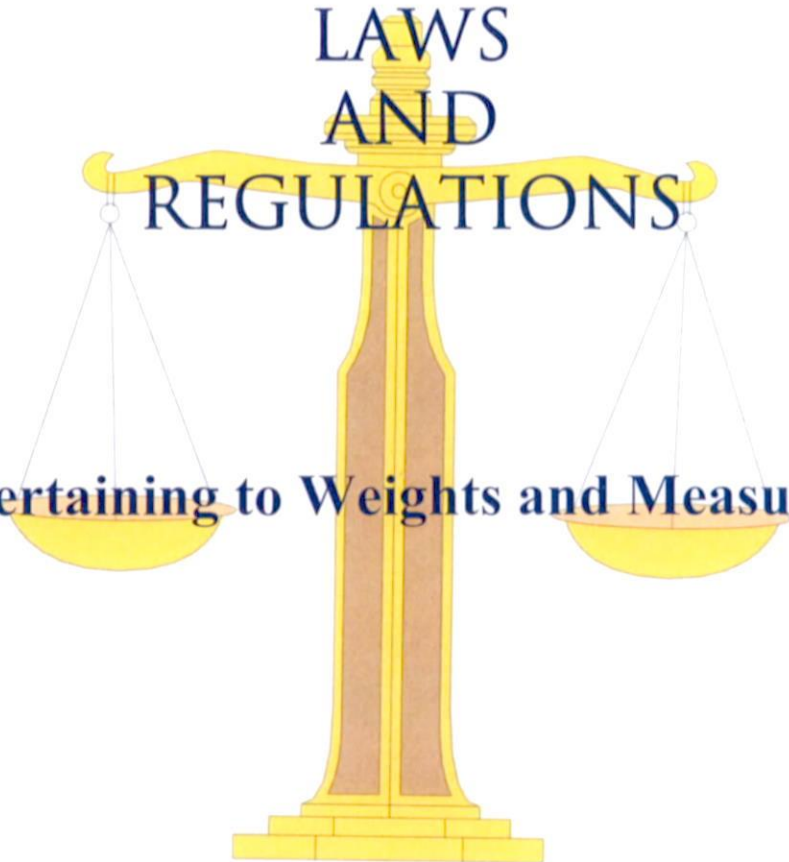


# COMMONWEALTH OF MASSACHUSETTS DIVISION OF STANDARDS

## MASSACHUSETTS GENERAL LAWS AND REGULATIONS

**Pertaining to Weights and Measures**



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## CHAPTER 6

Section 115A. Unit pricing of packaged commodities; retail sale; regulations; enforcement; penalties; report.

**Section 115A.** The director of standards may adopt regulations establishing lists of packaged commodities necessary for personal, family or household use to be offered for sale at retail and which may not be sold in retail stores unless there is posted in a conspicuous place at or near the point of sale the price per pound, pint or other unit or measurement of contents and the total sales price. Such regulations shall exempt any packaged commodity whose net weight is one whole unit or two whole units and which has the retail price plainly marked thereon. No packaged commodity shall be included in these regulations which must be individually marked with the cost per unit of weight, liquid, or dry measure, as provided in section one hundred and eighty-one of chapter ninety-four. Said director of standards may adopt such further regulations as are necessary to carry out the intent of this section, provided that a public hearing shall be held relative to any packaged commodity proposed to be regulated. The director of standards and local sealers and deputy sealers of weights and measures and local inspectors and deputy inspectors of weights and measures in cities and towns shall enforce any regulation adopted pursuant to the authorization contained in this section, and shall issue notices of violations of this section. Whoever violates any provision of this section shall for the first offense be punished by a fine of not less than ten nor more than fifty dollars, and for a subsequent offence by a fine of not less than twenty-five nor more than one hundred dollars or shall be subject to a civil citation as provided in section 29A of chapter 98.

Said director of standards shall annually report to the general court on or before the last Wednesday in January of each year relative to any action taken by it pursuant to this section in the preceding year.

This section shall not apply to a retail establishment that has a sales volume of less than \$5,000,000 per year of in-store sales.

## CHAPTER 24A

### OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

#### Section 5. Division of Standards.

Section 5. (a) There shall be a division of standards within the office of consumer affairs and business regulation. The director of the office, with the approval of the governor, shall appoint a deputy director of standards and, with like approval, may remove him. The deputy director of standards shall have charge of the division of standards and shall, in addition to the powers and duties conferred and imposed upon him by law, perform such other duties as may be assigned to him by the director of the office of consumer affairs and business regulation.

(b) Except as otherwise provided, the director of the office may employ and remove such inspectors, investigators, clerks and other assistants as the work of the division of standards may require. He may employ, for periods not exceeding ninety days, such experts as may be necessary to assist said division in the performance of any duty imposed upon it by law and such employment shall be exempt from the provisions of chapter thirty-one.

(c) The deputy director of standards and all inspectors and other permanent employees of the division of standards, shall devote their full time to the affairs of said division. Said deputy director, all such inspectors and such other employees of said division as may be designated by the director of the office shall, before entering upon their duties, be sworn to the faithful performance thereof. All such inspectors shall aid the deputy director of standards in the performance of his duties, shall have all necessary powers therefor and shall give bond for the faithful performance of their duties. Whoever hinders, obstructs or in any way interferes with the deputy director of standards or any such inspector in the performance of any official duty imposed by law shall, except as otherwise provided, be punished by a fine of not more than three hundred dollars or by imprisonment for not more than two months.

CHAPTER 31  
CIVIL SERVICE

Section 48: Civil service offices and positions; exemptions

**Section 48.** "All offices and positions in the official service of the commonwealth shall be subject to the civil service law and rules unless expressly exempted by this chapter or other law."

"Offices and positions in the service of cities and towns shall be subject to the civil service law and rules as provided by sections fifty-one, fifty-two, and fifty-three."

"The following shall be exempt from the civil service law and rules, unless expressly made subject thereto by statute:"

"Part-time municipal employees serving in the positions of electrical inspectors, wiring inspectors, plumbing inspectors, gas inspectors, sealer of weights and measures and assistant sealer of weights and measures."

**Note the above are only a small portion of Section 48 of Chapter 31, which was most recently amended by Chapter 767 of the Acts of 1981 reads in part as following:**

Section 29. No provision of this act shall affect any of the following:

Any action taken pursuant, Chapter 31 of the Massachusetts General Laws, as in force immediately prior to the effective date of this act. (The effective date of Chapter 767 was January 4, 1982)

Section 51: Cities; civil service offices and positions

**Section 51.** All positions in all cities shall be subject to the civil service law and rules except as provided by section forty-eight or other law and except that, in cities with less than one hundred thousand residents, positions which would fall within the labor service shall not be so subject unless the city council votes to accept the applicability of the civil service law and rules to the labor service.

Notwithstanding the provisions of section forty-eight, the following offices and positions in cities shall be subject to the civil service law and rules: (4) any office or position to which the civil service law and rules were applicable immediately preceding the effective date of this chapter.

**Section 52.** The following offices and positions in towns shall be subject to the civil service law and rules:

(2) Sealers and deputy sealers of weights and measures and inspectors and deputy inspectors of weights and measures, whether they are heads of departments or not, in towns of over ten thousand inhabitants.

The civil service law and rules shall also be applicable to any of the following in a town which accepts such applicability pursuant to the provisions of sections fifty-four and fifty-five:

(h) Sealers and deputy sealers of weights and measures or inspectors and deputy inspectors of weights and measures, whether they are heads of departments or not, in a town with more than five thousand but not more than ten thousand inhabitants.

Note: The citations in Section 51 and 52 are only small portions of these sections. Section 51 and 52 were most recently amended by Chapter 393 of the Acts of 1978.

## CHAPTER 41

### Section 85: Weighers, measurers and surveyors of commodities

**Section 85.** The mayor or the selectmen, on the written request of any person engaged in buying, selling or transporting goods or commodities which require weighing, surveying or measuring, shall appoint weighers, measurers or surveyors of such goods or commodities, who shall be sworn before entering upon their duties, shall serve for one year, and may be removed at any time by the appointing authority. At least one such weigher, measurer and surveyor in each town shall not be engaged in the business of buying, selling or transporting the goods or commodities weighed, measured or surveyed by him, but no person shall be ineligible for appointment because of sex or because of residence elsewhere than in the town where appointed, notwithstanding any provisions to the contrary in any general or special act.

**Section 86.** All persons appointed under section eighty-five shall keep accurate records, in the form prescribed by the director of standards, of all weighings, measurements or surveys made by them, which shall at all reasonable times be open to inspection by said director and his inspectors and by the local sealer of weights and measures. If any person so appointed shall wilfully misrepresent the weight, quantity or measurements of any goods weighed, measured or surveyed by him, he shall be punished by a fine of not more than one hundred dollars.

**Section 87.** The two preceding sections shall not affect the provisions of law for the appointment of weighers, measurers or surveyors of particular commodities.

**Section 87A.** The director of standards, upon the written request of the colonel of state police, shall appoint any of those persons appointed under section ten of chapter twenty-two C as weighers and measurers of motor vehicles and trailers and of the loads of such vehicles and trailers. Before entering upon their duties, such weighers and measurers shall be sworn. Such officers shall serve as long as they have the powers of police officers or until said colonel shall in writing request the director to revoke such appointment.

**Section 87B.** Repealed, 1974, 851, Sec. 2.

**Section 88.** The mayor of each city, and the selectmen of each town, where salt water fish are landed from vessels, shall annually appoint a public weigher of fish, to hold office for one year from the time of his appointment and until his successor is appointed, who shall be sworn to the faithful performance of his official duties and shall give bond, with sureties, in the sum of five thousand dollars.

**Section 89.** A public weigher of fish may appoint, subject to the approval of the mayor or the chairman of the selectmen, deputy weighers, for whose official conduct he shall be answerable, who shall be sworn, and from each of whom such weigher shall require a bond, with sureties, in the sum of one thousand dollars. The weigher and his deputies shall not be interested directly or indirectly in the buying or selling of fish.

**Section 90.** A weigher or any of his deputies who violates his oath of office shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, and shall forfeit his office.

**Section 90A.** Whoever hinders, or obstructs, or in any way interferes with a public weigher of fish or any of his deputies, in the performance of their official duties, shall be punished by a fine of not more than fifty dollars.

## CHAPTER 94

### INSPECTION AND SALE OF FOOD, DRUGS AND VARIOUS ARTICLES

#### DEFINITIONS

**Section 1.** The following words as used in this section and the other sections of this chapter to which their definition is hereinafter respectively limited, unless the context otherwise requires, shall have the following meanings:

"Article of food", in sections sixty-six to seventy-three, inclusive, includes fresh meat, fresh meat products except in process of manufacture, fresh food fish, poultry, eggs and butter.

"Food", in sections one hundred and eighteen to one hundred and fifty-one, inclusive, one hundred and fifty-four to one hundred and fifty-six, inclusive, one hundred and eighty-one, one hundred and eighty-six to one hundred and ninety-six, inclusive, three hundred and five C, and three hundred and twenty-eight, includes all articles, whether simple, mixed or compound, used for food or drink, confectionery or condiment, by man or animal.

"Ready-to-eat Food", a restaurant style food offered or exposed for sale, whether in restaurants, supermarkets or similar food service establishments, that is ready for consumption, though not necessarily on the premises where sold. Ready-to-eat food shall not include luncheon products, such as meat, poultry or cheese, when sold separately.

#### BREAD

**Section 7.** Except as provided in section eight, bread shall not be manufactured for sale, sold, or offered or exposed for sale otherwise than by weight, and shall be manufactured for sale, sold, or offered or exposed for sale only in units of one pound, one and one half pounds, or multiples of one pound. When multiple loaves are baked, each unit of the loaf shall conform to the weight required by this section. The weights herein specified shall mean net weights not more than twelve hours after baking, or not more than twelve hours after the sale and delivery of such loaves by the manufacturer or by his servant or agent. Such weights shall be determined by the average weight of not less than six loaves; provided, that such average weight shall be determined by the weight of at least twelve loaves whenever such number of loaves is available at the time and place of such weighing; and provided further, that bread found upon any premises occupied for the manufacture of bread for sale, or any bread found in the wagons, trucks, baskets, boxes, or other delivery vehicles or receptacles owned or controlled by the manufacturer of such bread, and being transported or delivered for sale, shall for the purposes of this section be deemed to have been baked within twelve hours unless such bread is marked, designated or segregated as stale bread, under regulations prescribed by the director of standards.

**Section 8.** Unit weights, as defined in the preceding section, shall not apply to rolls or to fancy bread weighing less than four ounces, nor to loaves bearing in plain position a plain statement of the weight of the loaf and the name and business address of the manufacturer thereof. Such information shall be stated in case of wrapped bread, upon the wrapper of each loaf; provided that, when cellophane or similar transparent wrappers are employed, the director of standards may authorize the placing of a statement of such information between such transparent wrapper and the top of the loaf in such manner that such statement may be easily read through the wrapper. In the case of unwrapped bread such information shall be stated upon a printed label not larger than one by one and three quarters inches nor smaller than one by one and one half inches. No label, attached to an unwrapped loaf,

shall be larger than provided herein, nor shall any such label be affixed in any manner or with any gum or paste which is unsanitary or unwholesome. When an inspection of bread is made at any bakery by the director or any inspector of standards or sealer of weights and measures, the manufacturer of such bread, or his servants or agents, shall, upon request of the official making such inspection, inform him whether such bread is manufactured for sale in any of the standard unit weights prescribed by the preceding section and, if not so manufactured for sale in such standard unit weights, shall furnish such official with samples of the labels or wrappers intended to be used on all such loaves of other than standard unit weights

**Section 9.** The director of standards shall prescribe such rules and regulations as are necessary to enforce the two preceding sections, including reasonable tolerances or variations within which all weights shall be kept; provided, that such tolerances or variations shall not exceed one ounce per pound under the standard unit or marked weight. The said director, and under his direction the local sealers of weights and measures, shall cause this section to be enforced. They may seize without warrant any bread which they may deem necessary to be used as evidence of violation of law, giving a receipt therefor, and such bread shall be returned to the owner or forfeited as the court may direct. Before any prosecution is begun under this section by any inspector of standards, the parties concerned shall be notified and given an opportunity to be heard before the director. Before any prosecution is begun under this section by any sealer or deputy sealer of weights and measures, the parties concerned shall be notified and given an opportunity to be heard before the sealer and shall have the right of appeal to the director of standards; provided, that such appeal is filed with said director in writing within five days from the finding of the local sealer. When such appeal has been entered no prosecution shall be begun until the charges have been reviewed by said director.

Note: Code of Massachusetts Regulations, Division of Standards 202 CMR 2.01

**Section 10.** Whoever violates any provision of sections two to nine, inclusive, or sections nine F to nine M, inclusive, or of any rule or regulation adopted thereunder, or whoever fails or refuses to comply with any request for information made under authority of said sections, shall be punished by a fine of not more than one hundred dollars.

## FISH

**Section 77F.** All food fish, except soft-shelled clams and oysters sold at wholesale, shall be sold by weight. Whoever violates this section shall be punished by a fine of not less than ten nor more than fifty dollars.

**Section 77I.** As used in sections seventy-seven A to seventy-seven H, inclusive, the following words shall have the following meanings unless a contrary intention appears:-

"Canned lobster meat or crab meat", lobster meat or crab meat preserved by heat processing, freezing, or refrigeration, and packed in a container impervious to contamination and so sealed that once opened it cannot be re-sealed and re-used for its original purpose.

"Clam", a marine mollusk of the species *Mya arenaria* commonly called the soft-shelled clam.

"Fish", any animal life inhabiting the ocean or its connecting waters including any crustacean or marine fish, whether free swimming or free moving, and any shellfish or sea worms, whether or not imbedded in the soil. All provisions of said sections relative to fish shall, so far as apt, apply also to lobster meat and crab meat after the same has been taken from the shell.

"Lobster", the common American lobster, of the species *Homarus americanus*.

“Quahaug”, a marine mollusk of the species *Venus Mercenaria* commonly called the hard-shell clam.

“Scallop”, a marine mollusk of the species *Pecten irradians*, commonly known as the bay scallop or shallow water scallop.

“Shellfish”, clams, conchs, mussels, oysters, periwinkles, quahaugs, razor clams or razor fish, scallops, sea clams, sea quahaugs, sea scallops and winkles.

**Section 84.** If fish are sold by the quintal, it shall mean a quintal of one hundred pounds avoirdupois, and all contracts relative to fish thus sold shall be so construed.

**Section 85.** If clam bait is sold by the barrel, “barrel” shall mean a fish barrel of not less than twenty-eight nor more than twenty-nine gallons, and containing twenty-six gallons of clams and not more than three gallons of pickle. If the purchaser and seller disagree as to the quantity in a barrel, either party may have it measured by the deputy director of standards or a sealer of weights and measures. If such barrel does not contain the said number of gallons of clams, the seller shall receive payment for the number of gallons of clams it does contain, but shall pay the expense of measuring and coopering; otherwise the purchaser shall pay such expense.

**Section 86.** All fish when landed from a vessel or boat shall be weighed by a public weigher of fish or his deputy, when so requested or demanded by the buyer or seller of such fish or by the master, agent or a majority of the crew of such vessel or boat; and said weigher shall issue a certificate of weight to the seller and a duplicate to the buyer. The director of consumer affairs and business regulation may adopt, amend or repeal, and shall enforce, all such reasonable rules and regulations, and orders thereunder, as may be necessary or suitable in relation to the weighing, sorting and culling of fish when landed from a vessel or boat. Whoever violates said rules or regulations or orders thereunder shall be punished by a fine of not less than fifty nor more than one hundred dollars.

Note: Code of Standards Regulations  
Secretary of Consumer Affairs  
201 CMR 10.01 and 10.02 Repealed 04/09/81

**Section 87.** Each deputy shall report to such weigher the weight of fish weighed by him, and the weigher shall keep a complete record of such weight with the date of weighing, the name of the vessel from which the fish were taken and the person for whom they were weighed.

**Section 88.** The fees for weighing fish shall be twenty cents per one thousand pounds, but in no case less than one dollar, and shall be paid by the person applying to have the fish weighed. Each deputy shall pay to the weigher two cents per one thousand pounds for all fish weighed by him.

**Section 88B.** No shucked scallops or quahaugs in the shell shall be sold except by weight. Whoever himself or by his servant or agent violates any provision of this section shall be punished by a fine of ten dollars.

## MEATS, POULTRY AND FISH

Section 92B: Meats, poultry and fish; sales at retail; weight; penalty.

**Section 92B.** All meats, poultry and edible fish, except soft shell clams and oysters, shall be sold at retail only by weight and, except when sold in package form bearing a plain and conspicuous statement of quantity of contents as provided in section one hundred and eighty-one, such weight shall be determined at the time of sale. Whoever himself or by his servant or agent violates any provision of this section shall be punished by a fine of ten dollars or shall be subject to a civil citation as provided in section 29A of chapter 98.

## FRUITS, VEGETABLES AND NUTS

**Section 96.** Except as otherwise provided in sections ninety-eight and ninety-nine and in chapter ninety-nine, or except when sold in the original standard container, all fruits, nuts, vegetables and grain shall be sold at retail by avoirdupois weight or numerical count. The words "original standard container," as used in this section shall mean and include only barrels, boxes, baskets, hampers or similar containers, the dimensions or capacity of which is established by law of this commonwealth or by act of congress, the contents of which have not been removed or repacked by the retailer, and upon which is plainly and conspicuously marked the net quantity of the contents thereof in terms of weight, measure or numerical count. This section shall not apply to the sale of apples repacked under the provisions of section one hundred and four nor to the sale, by the bunch, of fresh beets, onions, turnips, rhubarb and other similar vegetables usually and customarily sold by the bunch. Whoever violates any of the provisions of this section shall be punished by a fine of not more than ten dollars or shall be subject to a civil citation as provided in section 29A of chapter 98.

**Section 98.** Baskets or other receptacles holding one quart or less which are used or intended to be used in the sale of strawberries, blackberries, cherries, currants, blueberries, raspberries or gooseberries shall be of the capacity of one quart, one pint or one half pint, Massachusetts standard dry measure. Said baskets or other receptacles shall not be required to be tested and sealed as provided by chapter ninety-eight, but the sealer or deputy sealer of weights and measures of any town or the director of standards may, if he so desires, and shall, upon complaint, test the capacity of any basket or other receptacle in which any of the aforesaid fruit is sold or intended to be sold; and if the same is found to contain less than the standard measure he shall seize the same and make complaint against the vendor.

Whoever sells or offers for sale a basket or other receptacle holding one quart or less to be used in the sale of any of the aforesaid fruit which does not conform to said standard, and whoever sells or offers for sale any of the aforesaid fruit in any basket or other receptacle holding one quart or less which does not conform to said standard, shall be punished by a fine of not less than five nor more than ten dollars or shall be subject to a civil citation as provided in section 29A of chapter 98.

**Section 99.** Berries, except cranberries, when sold shall, subject to the preceding section, be measured by the strike or level measure.

**Section 99A.** The Massachusetts standard box for farm produce sold at wholesale, except as otherwise provided, shall contain two thousand one hundred fifty and forty-two one-hundredths cubic inches and shall be of the following dimensions by inside measurements: seventeen and one half inches in length by seventeen and one-half inches in width and seven and one sixteenth inches in depth. The Massachusetts standard half box for farm produce sold at wholesale shall contain one thousand seventy-five and twenty-



one one hundredths cubic inches and shall be of the following dimensions by inside measurements: twelve and three eighths inches in length by twelve and three eighths inches in width and seven and one sixteenth inches in depth. When the above specified boxes are made of wood the ends shall be not less than five eighths inches in thickness and the sides and bottom not less than three eighths inches in thickness. All such boxes and half boxes of the dimensions specified herein shall be marked on at least one outer side in bold, uncondensed capital letters, not less than one inch in height:- Standard Box Farm Produce, - and, - Standard Half Box Farm Produce, - respectively. The Massachusetts lug for tomatoes sold at wholesale or retail shall contain one thousand seventy-eight and forty-three one hundredths cubic inches and shall be of the following dimensions by inside measurements: seventeen and one half inches in length by eight and one half inches in width by seven and one quarter inches in depth. Whoever marks or otherwise represents any box or half box to be a standard box or half box for the sale of farm produce at wholesale shall, unless such box or half box complies with every specification and requirement of this section, be punished by a fine of not more than fifty dollars. The deputy director of standards in the office of consumer affairs and business regulation, his inspectors and the sealers and deputy sealers of weights and measures in cities and towns shall enforce the provisions of this section.

## CRANBERRIES

**Section 115.** The legal and standard barrel for cranberries shall measure not less than twenty-five and one fourth inches between the heads, inside; the length of the staves shall be twenty-eight and one half inches; the diameter of the head shall be not less than sixteen and one fourth inches, including the bevelled edge; the outside bulge circumference shall measure not less than fifty-eight and one half inches; the thickness of the staves shall be not greater than four tenths of an inch. The legal and standard crate for cranberries shall measure seven and one half inches, by twelve inches, by twenty-two inches, inside, exclusive of any interior partition or support, and shall have an interior capacity of one thousand nine hundred and eighty cubic inches; but any square or oblong crate or box of different form, but of as great interior capacity, shall be considered a legal and standard crate.

**Section 116.** Each barrel, crate, one half crate or one quarter crate used for the sale or delivery of cranberries shall be of the standard measure prescribed in this or the preceding section, and shall be marked as therein required. No person shall use any barrel, crate, one half crate or one quarter crate for such sale or delivery, the capacity of which is less than that of the corresponding standard package prescribed in the preceding section. Sealers of weights and measures shall enforce this and the preceding section. Whoever violates any provision of this or the preceding section shall be punished by a fine of not more than one hundred dollars.

It shall be lawful to use for the sale and delivery of cranberries, square, or oblong packages which contain one half crate or one quarter crate, provided that such packages have an interior capacity, exclusive of any partition or support, of nine hundred and ninety and of four hundred and ninety-five cubic inches, respectively. No barrel, crate, one half crate or one quarter crate, intended to be used for the sale or delivery of cranberries, except of the standard measure specified in this section, and plainly marked with the words "'Massachusetts Standard Measure," shall be manufactured or sold. No person shall so mark any barrel or other package so used, or intended to be used, unless its interior capacity is as great as the capacity herein specified for such package.

Nothing in this or the preceding section shall prohibit the use of third, half and three quarter barrels, as provided by United States law.

**Section 117.** It shall be lawful to use for the sale and delivery of cranberries packages containing one, two or four pounds of cranberries, net weight; provided, that said net weight is plainly stamped on the top or side of each package.

## WEIGHERS OF BEEF

**Section 140.** In each town where beef cattle are sold for the purpose of marketing or barreling, the mayor or selectmen shall appoint one or more persons, conveniently situated in such town and not dealers in cattle, as weighers of beef. Each such weigher shall be sworn to the faithful performance of his duties.

**Section 141.** Fees for weighing cattle shall be paid by the vendor and, unless otherwise established in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances to set such fees, shall be twenty cents for each of the first five cattle, fifteen cents for each of the second five, ten cents each from the eleventh to the twentieth, inclusive, and five cents for each cattle weighed above twenty; also twelve and one half cents for each certificate, which shall contain the weight of each of the cattle weighed for one person unless the vendor requests a division thereof.

## ICE

**Section 157.** Whoever, being engaged in the business of selling ice at retail, and not engaged in the delivery of the same under a contract, refuses to sell from any place or vehicle engaged in the regular distribution of ice at retail a piece of ice at the fair value thereof to any person other than an ice dealer, shall, if such person tenders in payment therefor the amount of five cents or any multiple thereof not more than fifty cents in legal money of the United States, be punished by a fine of not more than one hundred dollars.

**Section 158.** A dealer in ice, who refuses or neglects to provide scales for each vehicle used by him for the retail delivery of ice, or who neglects to furnish to the sealer of weights and measures of each city or town in which he conducts business a list of the current prices of ice sold by him at retail, shall be punished by a fine of not more than fifty dollars.

**Section 159.** Whoever having charge of the retail delivery of ice from a vehicle neglects to keep conspicuously posted upon each side of the vehicle the current retail prices of ice sold by him, or refuses or neglects to sell the same by weight, or refuses to weigh the same upon request of the purchaser, shall be punished by a fine of not more than fifty dollars.

## CERTAIN STANDARDS

**Section 172.** The barrel shall contain thirty-one and one-half gallons and the hogshead two barrels, except that barrels containing malt beverages shall contain thirty-one gallons and that with respect to such barrels and fractional parts thereof a variation or tolerance of three per cent over and under the standard capacity shall be permitted.

**Section 174.** A cental or hundredweight shall be one hundred pounds.

**Section 174A.** No person shall pack for sale, sell, offer or expose for sale in this commonwealth, except in containers of net avoirdupois weights of five, ten, twenty-five, fifty and one hundred pounds, and multiples of one hundred pounds, any of the following commodities:- wheat flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meals, hominy and hominy grits; provided, that this section shall not apply to (a) the retailing of flours, meals, hominy and hominy grits direct to the consumer from bulk stock, or (b) the sale of flours and meals to commercial bakers or blenders or for export in containers of more than one hundred pounds, or (c) flours, meals, hominy and hominy grits packed in containers the net contents of which are less than three pounds,

or (d) the exchange of wheat for flour by mills grinding for toll. Whoever violates any provision of this section shall be punished by a fine of not less than twenty-five nor more than five hundred dollars or shall be subject to a civil citation as provided in section 29A of chapter 98.

**Section 175. Repealed, 1945, 92, Sec. 2.**

### SALES BY WEIGHT

**Section 176.** "Weight" in a sale of commodities by weight shall mean the net weight of all commodities so sold; and contracts concerning such sales shall be so construed; provided, that in respect to commodities not intended for food or fuel reasonable tolerances or variations shall be permitted in accordance with established trade customs. As defined in section one, ready-to-eat food sold from bulk or in single servings packed on the premises, may be sold by weight, measure or count; provided, however, that count shall include servings. Violation hereof shall be punished by a fine of not more than one hundred dollars or shall be subject to a civil citation as provided in section 29A of chapter 98.

**Section 177.** Except as otherwise provided by section two hundred and forty-eight, whoever himself or by his servant or agent gives or attempts to give false or insufficient weight or measure, or inferentially misrepresents the weight or quantity of a commodity sold or delivered by weight or measure by stating a price without stating the weight or quantity of such commodity, such price being in fact greater than the price advertised for such commodity or mutually understood by both parties to be the price for a given weight or measure, or demands or accepts payment in excess of the regularly quoted selling price of a commodity sold or delivered by weight or measure, or misrepresents the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count or represents the price in any manner calculated or tending to mislead or in any way deceive a person, or takes or attempts to take more than the quantity he represents when, as the buyer, he furnishes the weights, measures or weighing or measuring device by means of which the amount of commodity is determined, shall be punished for the first offense by a fine of one hundred dollars, for the second offense by a fine of two hundred and fifty dollars, and for a subsequent offense by a fine of five hundred dollars or shall be subject to a civil citation as provided in section 29A of chapter 98.

**Section 178.** Each public weigher of goods or commodities shall weigh them according to section one hundred and seventy-six, and shall certify accordingly; and for each refusal or neglect he shall forfeit not more than ten dollars. Each weigher of goods appointed by a town, and each weigher for hire or reward, shall be a public weigher hereunder.

**Section 180.** Complaints and prosecutions for violations of law relating to the use or giving of false or insufficient weight or measure may be commenced and prosecuted in a court having jurisdiction of the place to which the goods are shipped.

### MARKING OF PACKAGES CONTAINING FOOD

**Section 181.** Subject to the variations, tolerances and exemptions provided for by section one hundred and eighty-two, no person shall himself or by his agent or servant sell or offer for sale food in package form unless the net quantity of the contents is plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count. No person shall himself or by his agent or servant sell or offer for sale at retail any meat, poultry or edible fish, except soft shell clams and oysters, in package form unless there is plainly and conspicuously marked on the outside of such package the price per pound of the contents and the total sales price. This section shall not apply to off-premise, standard factory-packaged

meat, poultry or fish items where the weight and price are the same for each meat, poultry or fish item. The first sentence of this section shall not apply to retail sales of food made from bulk if the quantity is weighed, measured or counted at the time of such sale by the retailer, nor to the sale of milk, cream or buttermilk in glass jars, as provided by section fifteen of chapter ninety-eight.

Any commodity put up or packaged in any manner in advance of sale at retail shall bear on the outside of the package a plain and conspicuous declaration of the identity and the net quantity of the contents. The declaration of identity shall identify such commodity by its common or usual name, description, generic term, or the like, unless such commodity may be easily identified through the wrapper or container. The declaration of quantity shall disclose the net quantity of the commodity. The term "net quantity" as used in this section shall mean the quantity of the commodity in the package, exclusive of wrappers and other material packed with such commodity, except that the declaration of quantity on an aerosol package shall disclose the net quantity of the commodity, including the propellant. The declaration of quantity shall be expressed in terms of such weight, measure or count, or a combination of such weight, measure or count, as are firmly established by general consumer usage and trade custom and convey accurate information relative to the quantity or amount of the commodity. If there is no established consumer usage and trade custom with respect to the terms used in such declaration of quantity, the declaration shall, if the commodity is solely liquid, be in terms of liquid measure; otherwise, in terms of weight, except that if a commodity is packaged in an aerosol container, the commodity, including the propellant, shall be in terms of weight, and if the commodity is cloth or yard goods, the declaration shall be in terms of linear measure.

Any representative authorized by the director of standards and any person authorized under section 34, 35 or 36 of chapter 98, shall enforce this section and sections 182 to 184E, inclusive, except section 184A. Enforcement shall include, but shall not be limited to, conducting inspections and issuing notices of violations as provided in section 29A of said chapter 98.

**Section 182.** The director of standards shall adopt the variations, tolerances and exemptions established, or hereafter established, by rules and regulations provided for by section three of the act of congress mentioned in section one hundred and ninety-two, with such further reasonable variations, tolerances and exemptions not covered by the rules and regulations by said section as he deems expedient. Note: Code of Massachusetts Regulations, Division of Standards 202 CMR 3.00

**Section 183.** Whoever violates any provision of section one hundred and eighty-one shall for the first offence be punished by a fine of not less than ten nor more than fifty dollars, and for a subsequent offence by a fine of not less than twenty-five nor more than one hundred dollars or shall be subject to a civil citation as provided in section 29A of chapter 98.

**Section 184.** Prosecutions under the preceding section shall not be commenced until the party concerned is notified and given an opportunity to be heard before the director of standards. No dealer shall be prosecuted thereunder if he establishes a guaranty, signed by the wholesaler, jobber, manufacturer, dealer or other person residing in the United States, from whom he purchased such articles, that they are correctly marked or labelled under section one hundred and eighty-one, designating it, and containing the name and address of such vendor, but in that case such guarantor shall be liable to prosecution and to the penalties provided by section one hundred and eighty-three. If section one hundred and eighty-one has been violated and the guarantor is without the commonwealth, no action shall be brought, but the director of standards shall report the facts to the proper national authorities.

CHAPTER 94  
ITEM PRICING LAW

Section 184B: Definitions applicable to Secs.184B to 184E

**Section 184B.** As used in sections 184B to 184E, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

“Advertised price”, the price of an item published or disclosed in any circular, newspaper, magazine, television or radio commercial or in any other medium or any published correction thereof.

“Automated checkout system”, a cash register, computer terminal or other device capable of determining the price of an item from the item’s code after searching the electronic price database and printing an itemized sales receipt for a consumer.

“Card price”, the price a loyalty card holder will be charged if different from the non-card price.

“Checkout price”, the price of an item to be charged to the consumer whether purchased or not as listed on an automated checkout system display or on an itemized sales receipt.

“Code”, an identifier of an item including, without limitation, symbols, letters, numbers, bars or combinations thereof.

“Consumer price scanner”, an electronic scanner provided for consumer use that is capable of reading an item’s code and displaying a description of the item and its correct price after searching the electronic price database.

“Correct price”, the advertised price in any circular, newspaper, magazine, television or radio commercial, or in any other medium, or any published correction thereof. If an item is not advertised, the correct price shall be the lowest display price indicated on any store sign for the item, but not if the checkout price is lower. If an item has no display price, the correct price shall be the price of the item on its unit price label, but not if such item is rung up at a lower price. If no unit price label is displayed, the correct price shall be the price rung up by the food store’s or a food department’s automated checkout system. If the foregoing provisions for establishing the correct price are not determinative in a particular situation, the correct price shall be the price on the seller’s current price list.

“Director or deputy director”, the deputy director of the division of standards established pursuant to section 5 of chapter 24A or the director’s designee including an inspector, a sealer or a deputy as defined in section 1 of chapter 98.

“Discount”, a percentage reduction or special price reflected in the checkout price and indicated on the itemized sales receipt.

“Display price”, the price on a sign or label affixed to a display, table, shelf or other means of presentation upon which the unit is placed.

**"Division"**, the division of standards established pursuant to section 5 of chapter 24A.

**"Dual pricing system"**, a separate pricing system that allows for 1 correct price for non-loyalty cardholders and 1 correct price for loyalty card holders.

**"Food"**, anything edible.

**"Food department"**, any seller, other than a warehouse club or a food store, with any grocery item section, area or display which sells 100 or more different food items for consumption off the seller's premises, at least in part to individuals for personal, family or household use; provided, however, that any food section that is within a larger business and is the functional equivalent of a food store with its own separate checkout, may be deemed a food store by the director of standards.

**"Food store"**, any store, shop, supermarket, grocer, convenience store or other seller, whose primary business is selling either food for consumption off the seller's premises alone or in combination with grocery items or other nondurable items typically found in a supermarket, and such items are sold at least in part to individuals own personal, family or household use; provided, however that "food store" shall not include a warehouse club.

**"Grocery item"**, any food, pet food or supply, soap, household cleaner of any type, laundry product, light bulbs or disposable paper or plastic products.

**"Individual item" or "unit"**, one of an item.

**"Item"**, a specific and distinct product, good or commodity available for sale having a different universal product code or SKU for other items so coded; provided, that for items not so coded, an item having any distinguishing characteristics compared to another item.

**"Itemized sales receipt"**, a printed and dated sales receipt listing, at a minimum, the price charged to the consumer for each item and the quantity sold.

**"Loyalty card"**, a card or other device issued that confers certain benefits to cardholders, including discount prices upon presentation of the card; provided, however, that "loyalty card" shall not include membership cards issued by warehouse retailers.

**"Price list"**, an easily referenced list that indicates the code, the description and the current correct price of each item excluded under subsection (c) of section 184C.

**"Scanner price"**, the price of an item as displayed on a consumer price scanner.

**"Seasonal employment"**, services performed for wages for a seasonal employer during the seasonal period in the employer's seasonal operations, after the effective date of a seasonal determination with respect to the seasonal employer.

**"SKU"**, the stock-keeping unit, number or code used to identify each unique product or item for sale in a food store or food department.

“Sticker price”, the price on a sticker, ticket, tag or other label affixed to an individual item.

“Warehouse club”, a retail store in which customers pay annual membership fees in order to purchase items at member-only prices.

Section 184C: Price disclosure and display on items offered for sale by food store or food department

**Section 184C.** (a) The correct price of an item offered for sale by a food store or a food department shall be disclosed to consumers in a clear and conspicuous manner. A food store or food department may elect to disclose the correct price using either an individual item pricing system or a consumer price scanner system; provided, that the food store or food department has been granted permission by the division to use a consumer price scanner system. All prices represented to the consumer for the same item shall be consistent with each other and the correct price.

(b) A food store or food department that implements an individual item pricing system shall affix the correct price on each unit in a clear and conspicuous manner by means of a sticker price; provided, that the food store or a food department attaches a correct display price shelf tag not less than 1 inch high for each separate SKU or separately-coded item. In the case of a food store or a food department that utilizes loyalty cards or otherwise maintains a dual pricing system, the non-card price shall be affixed to the item if it differs from the loyalty card price; provided, that a sign at the point of display shall include both the loyalty card price and the non-card price, so labeled if different, as well as either the amount of savings per unit or the per cent of savings.

(c) A food store or food department that implements a consumer price scanner system shall have the code of an item affixed to each individual unit by means of a sticker, ticket, tag or other label that can be read by a consumer price scanner and automated checkout system to display the correct price. The item's code, unabbreviated description and correct price shall be disclosed in a clear and conspicuous manner by a correct display price shelf tag not less than 1 inch high. In the case of a food store or a food department that uses loyalty cards or otherwise maintains a dual pricing system, the sign at the point of display shall include both the loyalty card price and non-card price, so labeled if different, as well as either the amount of savings per unit or the percent of savings.

(d) Upon a determination by the division that:

- (i) a clear and conspicuous sign disclosing the item's code, description and correct price is posted where these items are displayed;
- (ii) the cashier can readily discern the item's correct price;
- (iii) the food store or food department maintains an itemized list for all exempted items; and
- (iv) the list is available at each checkout and can be reviewed by a customer upon request, a food store or a food department may exempt the following classes of items from its individual item pricing system:

(1) unpackaged: produce, meat, fish, poultry, delicatessen, bakery items and any other items that are unpackaged and offered from a bulk display; provided, however, that any such item weighed or wrapped to order by a food store or a food department but paid for at a place other than at the point of such weighing or wrapping shall have the correct price marked on the item;

- (2) gallons and half gallons of milk;
  - (3) eggs;
  - (4) cigarettes, cigars, tobacco and tobacco products;
  - (5) individual items within a multi-item package, if the package is marked with the correct price;
  - (6) cakes, gum, candy, chips, nuts and other snack foods, if offered for sale individually and located at the checkout area;
  - (7) individual greeting cards, if marked with a price code readily understandable by the consumer;
  - (8) individual containers of baby food of the same brand and price where vegetable or fruit is the predominant ingredient other than water, but not including juices;
  - (9) soft drink bottles and cans;
  - (10) frozen food products;
  - (11) items sold by length, area, weight or volume that are unpackaged, including, without limitation, chain, rope, flooring, lumber, fabric, stone or soil;
  - (12) items that are required to be retrieved for the consumer by store staff including, without limitation, large electronics or appliances, display or representative items or items displayed in a locked case or out of reach of consumers;
  - (13) packaged self-service items that are small in size and are offered for sale located at the checkout area;
  - (14) live animals;
  - (15) items sold in a coin operated vending machine; and
  - (16) not more than 60 additional items that are accessible to the consumer in a free standing or end-aisle display that has at least 50 units of the same item; provided, however, that unless the deputy director determines otherwise, individual items that differ only by color, flavor or scent shall be counted as the same item for the purpose of this clause if they are identical in all other aspects, including price, size and brand.
- (e) Food stores or food departments utilizing an individual item pricing system shall be allowed to exempt additional items, the exact number of which shall be based on the number of operable cash registers located at the main checkout location. Food stores or food departments with 1 operable cash register shall be allowed to exempt 20 additional items. Food stores or food departments with 2, 3 to 4 or 5 to 6 operable cash registers shall be allowed to exempt 50, 100 or 200 additional items, respectively. Food stores or food departments with 7 or more operable cash registers may exempt up to 400 additional items. In the case of a food department, the number of additional items that may be exempted under this subsection shall be reduced by 75 per cent. In no case shall the number of exemptions permitted by this exception exceed 4.5



per cent of the number of packaged grocery items carried by the seller. All additional exemptions allowed under this subsection shall be granted provided that the food store or food department maintains an automated checkout system that has been determined to be at least 95 per cent accurate during a price accuracy inspection conducted by the division or a designee and maintains a dated, written price list of the items it has chosen to exempt. The price list shall include a clear description of each item and the code number understood by the seller's automated checkout system. Deletions may be made from the list at any time, but no additions, substitutions or changes may be made to the list except twice a year in January and July. The exemption permitted by this section shall not apply to any item not on that price list and shall not apply unless the price list has been established and is available upon request at the food store or food department to any consumer or any representative authorized by the deputy director. The list shall be maintained so that any item may be referenced easily by a consumer. No seller may choose to exempt items required to be price marked by other laws or regulations governing specific types of items, nor may a seller exempt more than 200 items in any 1 department except in the grocery department.

(f) A food store or a food department utilizing a consumer price scanner system may exempt the following items from displaying the correct price at its consumer price scanners, provided it complies with clauses (i) to (iv), inclusive, in subsection (d): (1) unpackaged and uncoded items to which a price sticker cannot be reasonably affixed; and (2) loose produce with SKU numbers.

(g) Items purchased at a food store or a food department shall appear on an itemized sales receipt that shall be provided to the consumer.

(h) If the consumer purchases a sale item or qualifies for a discount, including discounts granted for presenting a loyalty card, the amount saved shall be reflected in the checkout price and printed on the consumer's itemized sales receipt.

*[Subsection (i) as amended by 2017, 110, Sec. 11 effective November 3, 2017.]*

(i) Notwithstanding subsection (g) of section 184D, if there is a discrepancy between the advertised price, the sticker price, the scanner price or the display price and the checkout price on any grocery item, a food store or a food department shall charge a consumer the lowest price. If the checkout price or scanner price is not the lowest price or does not reflect any qualifying discount, the seller: (i) shall not charge the consumer for 1 unit of the grocery item, if the lowest price is \$10 or less; (ii) shall charge the consumer the lowest price less \$10 for 1 unit of the grocery item, if the lowest price is more than \$10; and (iii) shall charge the consumer the lowest price for any additional units of the grocery item. For the purposes of this subsection and unless the deputy director determines otherwise, individual items that differ only by color, flavor or scent shall be counted as the same item if they are identical in all other aspects, including price, brand, and may only vary in random weight. This subsection shall not apply if: (1) there is evidence of willful tampering; or (2) the discrepancy is a gross error, in that the lowest price is less than half of the checkout price and the seller, in the previous 30 days, did not intend to sell the grocery item at the lowest price. The provisions of this subsection shall be clearly and conspicuously posted by all food stores or food departments which use a consumer price scanner system at each register. For each register that fails to display appropriate signage, the food store or food department shall be subject to a fine of \$200, up to a maximum of \$500 per inspection by the deputy director. All food stores or food departments shall maintain data on price discrepancies. This data shall be provided to the division upon request.

(k) The deputy director may require sellers to disclose a consumer's rights under sections 184C to 184E, inclusive, by a writing provided by the division.

(l) The division shall promulgate regulations for the administration and enforcement of sections 184B to 184E, inclusive. Failure to comply with any of the provisions of sections 184B to 184E, inclusive, may constitute a violation under chapter 93A.

Section 184D: Inspection of food stores and food departments for compliance with Secs. 184B to 184E; violations and fines; consumer complaint of noncompliance

**Section 184D.** (a) The deputy director or the deputy director's inspectors and sealers of weights and measures and those deputies, as defined in section 1 of chapter 98, shall inspect each food store or food department for compliance with sections 184B to 184E, inclusive. The inspections shall be conducted pursuant to the national industry standards adopted by the National Conference on Weights and Measures of the National Institute of Standards and Technology or any other rules or guidelines promulgated by the division pertaining to the implementation and enforcement of sections 184B to 184E, inclusive. Nothing shall inhibit the oversampling of sale items during inspections. A food store or food department shall provide the inspector with access necessary to conduct an inspection. The deputy director shall notify the food store or food department in writing of violations of this section and of any fines imposed pursuant to sections 184B to 184E, inclusive.

(b) Violations of sections 184B to 184E, inclusive, for which fines shall be levied shall include, but not be limited to: (1) having no price marked on a unit that is required to be priced and is not exempted; (2) having an incorrect price on a unit; (3) having an incorrect or missing sign; or (4) overcharging on a unit. A unit shall be deemed to be overcharged once it is rung up at a price higher than any represented price. Notwithstanding the method for determining the amount of civil fines under section 29A of chapter 98, a civil citation may be issued for \$200 for each violation, up to a maximum of \$5,000 per inspection, for a food store or a food department utilizing a consumer price scanner system. Notwithstanding the method for determining the amount of civil fines under said section 29A of said chapter 98, a civil citation may be issued for \$100 per violation, up to a maximum of \$2,500 per inspection, for a food store or food department utilizing an individual item pricing system. For a food store or a food department utilizing a consumer price scanner system, if an item is advertised either in a food store, food department or in a circular as on sale or discounted because of a loyalty card price and the item registers at a higher price at the checkout counter than indicated by a sale or loyalty card price, a civil citation shall be issued for \$300 per violation, up to a maximum of \$5,000 per inspection. The deputy director shall not issue a fine under sections 184B to 184E, inclusive, and section 56D of chapter 98 for the same violation.

(c) A fine imposed by the deputy director shall be paid within 21 days of issuance of the notice, unless the seller appeals pursuant to the civil citation appeal process found in section 29A of chapter 98. The food store or food department shall immediately correct any noncompliance with sections 184B to 184E, inclusive, when notified by the inspector.

(d) The deputy director or any representative authorized by the division may conduct inspections of any item and shall issue notices of violation to any food store or food department for any violation of sections 184B to 184E, inclusive; provided, however, that no food store or food department shall be inspected more than once a month, unless such inspection is intended to verify the correction of violations found during a recent inspection or to verify the validity of a specific consumer complaint made through the process in subsection (e). For the purposes of this section, each occasion that an item scans erroneously during an inspector's attempt to verify its correct price shall constitute a separate civil violation. The seller shall immediately correct all violations.

(e) A consumer may submit a complaint to the attorney general or to the deputy director regarding noncompliance with sections 184B to 184E, inclusive. All food stores or food departments subject to sections 184B to 184E, inclusive, shall provide, upon request, a complaint form for the consumer to complete and submit. Each submitted complaint shall be investigated. In the case of any verified consumer complaint, fines for overcharging shall be limited to 1 violation per item. A fine shall be issued upon verification of any consumer complaint alleging overcharging or improper price marking.

(f) If the deputy director determines that a food store or a food department is either intentionally or through gross negligence violating any provisions of sections 184B to 184E, inclusive, the deputy director shall provide written notice of such determination to the food store or food department and the food store or food department shall have 30 days to cure these violations. If upon re-inspection, the deputy director determines that the food store or food department still is not in substantial compliance with this section and sections 184B to 184E, inclusive, all of the food store's or food department's exemptions shall be rescinded for a period of 12 months and the matter shall be referred to the attorney general for action against that food store or food department.

(g) Sections 184B to 184E, inclusive, shall only apply to food stores and to grocery items in food departments. Said sections shall not diminish any obligations under other laws or regulations regarding item pricing for sellers other than food stores or for items other than grocery items in food departments. If a seller is also subject to the item pricing regulations or guidelines of another agency, in cases where a specified number of items is allowed to be exempted under 2 similar exceptions to the requirement of item pricing, such similar provisions shall not be additive. Compliance with another agency's regulations or guidelines which differ from said sections 184B to 184E, inclusive, or any regulations issued under those sections by the deputy director shall not be a defense to a violation of said sections or any regulations promulgated under said sections hereunder.

(h) The division may retain all registration fees and fines it collects under sections 184B to 184E, inclusive, sections 56D and 56E of chapter 98 not to exceed \$2,500,000 annually in order to support its enforcement activities; provided, however, that any excess fees and fines, up to \$1,000,000 in excess of this figure, shall be used to fund the division of standards municipal grant program for approved agents to assist the division in lieu of a legislative appropriation. In the event that the division and the municipal grant program are fully funded, all additional revenue shall be turned over to the General Fund.

Section 184E: Conversion from individual item pricing system to consumer price scanner system operation and inspection of consumer price scanner system

**Section 184E.** (a) A food store or food department seeking to convert from an individual item pricing system to a consumer price scanner system shall seek a waiver from the division. The waiver shall be granted by the division provided that the food store or food department has no outstanding fines under sections 184B to 184D, inclusive, or section 56D of chapter 98 and pays a \$250 fee annually to the division if the retail space is less than 15,000 square feet, \$500 fee if the retail space is greater than or equal to 15,000 square feet, but less than 30,000 square feet or a \$1,000 fee if the retail space is 30,000 square feet or more.

(b) Under the regulations promulgated under this chapter, the division shall require each applicant to complete a "no job loss" affidavit which shall include, but not be limited to, the number of people employed at the time of the application process and the establishment of a complaint process, to ensure that full and part-time employees do not suffer any wage or benefit loss due to the transfer. After the filing of the

affidavit, if there is any resulting job loss at the store due to the implementation of the waiver, as determined by the division, not attributed to seasonal employment or verifiable economic pressures, the store shall be required to use an individual item pricing system for 1 year under sections 184B to 184E, inclusive, or other applicable laws or regulations promulgated hereunder and be subject to a fine of not more than \$5,000.

(c) A food store or food department using a consumer price scanner system shall be subject to inspection by the deputy director for compliance with this section. The deputy director shall not cause any food store or food department using a consumer price scanner system to be inspected more than once per calendar month. If, within the previous 30 days, there is a verified pattern of consumer complaints or, upon regular inspection, the food store or food department is not in compliance with this section, the division may inspect a food store or food department using a consumer scanner pricing system once every week until the food store or food department is found to be in compliance with this section.

(d) Each food store or food department with more than 5,000 square feet of retail space that employs a consumer price scanner system shall have at least 1 fully operational consumer price scanner for every 5,000 square feet of retail space or part thereof. The location of a consumer price scanner shall be disclosed by 1 clear and conspicuous sign at eye-level and 1 clear and conspicuous sign above eye level. Consumer price scanners shall be equally spaced throughout the store in fixed locations. A food store or food department with more than 5,000 square feet but less than 20,000 square feet shall have 1 fully operational consumer price scanner capable of producing an individual item pricing tag, located at the front of the food store or food department. A food store or food department with more than 20,000 square feet shall have 2 fully operational consumer price scanners capable of producing an individual item pricing tag, with at least 1 located at the front of the food store or food department. At all such scanner locations, the food store or food department shall provide the consumer with a means by which such pricing tag may be affixed or appended to the item or its packaging, such as tape or an adhesive price tag. The deputy director may, by regulation, authorize new technologies in lieu of required consumer price scanners which further the intent of this section, including, but not limited to, hand held or shopping cart attached scanners which retain in memory and itemize all scanned items. Such technologies may reduce the required number of consumer scanners by no more than 50 per cent.

(e) Consumer price scanners shall be deemed fully operational if: (1) the consumer price scanner clearly and conspicuously identifies and displays the item by name or other distinguishing characteristics; and (2) the consumer price scanner displays the item's correct price when the item is scanned and, in the case of a food store or food department that uses loyalty cards or otherwise maintains a dual pricing system, the consumer price scanner displays both the loyalty card price and the non-card price if they differ. A sign containing contact information for the division shall be posted by each consumer price scanner so that consumers may report broken consumer price scanners. Such consumer price scanners shall be in compliance with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the architectural access board regulations 521 CMR 1.00, et. seq. Any violation of this subsection shall be considered in determining a consumer price scanner's pass or fail designation as defined in subsection (i).

(f) Any food store or food department with more than 5,000 square feet of total space converting from an individual item pricing system to a consumer price scanner pricing system shall within 3 months of such conversion hire or maintain not less than 2 employees whose responsibilities shall include the maintenance of all consumer price scanners within the food store or food department.

(g) An inspector may choose to test a food store or food department's consumer price scanner system for accuracy. The inspector may choose the sample size for accuracy tests provided that the size of sample is

not less than 50 items and not more than 200 items. Any scanning that yields an incorrect price that causes a food store or food department's consumer price scanner accuracy rating to fall below 98 per cent shall constitute a separate violation. This subsection shall not be used to impact a scanner's pass or fail grade as defined in subsection (i) but the cumulative violations of this subsection in any particular store or department shall be used in contributing toward the maximum fine imposed under the same subsection.

(h) Upon inspection, the deputy director shall notify the store manager, who shall provide the inspector with a map of the food store or food department outlining the consumer price scanner locations and the food store or food department's square footage of retail space. The food store or food department's number of scanners shall be sufficient for the food store or food department's size under subsection (d). Any violation of this subsection shall result in a fine of \$1,000, which shall not count toward the maximum fine established under subsection (i); provided, however, that the deputy director may reduce this fine consistent with section 29A of chapter 98.

(i) Each consumer price scanner shall be graded on a pass or fail basis by inspectors. A failing consumer price scanner shall include, but not be limited to, missing consumer price scanners or inadequate signage under subsection (d). Each scanner found to have failed the test shall constitute a separate violation of this section. Notwithstanding the method for determining the amount of civil fines under section 29A of chapter 98, a civil fine may be issued for \$200 for each violation, up to a maximum of \$2,500 per inspection; provided, however, that the deputy director may reduce any fine imposed under this section consistent with said section 29A of said chapter 98.

## GRAIN AND MEAL

**Section 219.** Mayors and selectmen shall annually appoint one or more weighers of grain, who shall be sworn to the faithful performance of their duty; and if only one is appointed by them, they may authorize him to appoint deputy weighers.

**Section 221.** The fees of weighers of grain and their deputies, if any are authorized, shall be prescribed by the aldermen or selectmen of the several towns where they are appointed. One half of such fee shall be paid by the seller and one half by the purchaser.

**Section 222.** If any wheat, corn, rye, oats, barley, buckwheat, cracked corn, ground corn or corn meal, ground rye or rye meal, or feed, or any other meal, is sold by the cental or hundredweight, the weigher or his deputy, on request of either party to the contract, shall ascertain the weight thereof and shall give a certificate of the number of centals or hundredweight of the same; and whoever sells and delivers a quantity of either of said articles exceeding one cental or hundredweight, if it has not been weighed by such weigher or his deputy, shall forfeit to the purchaser ten dollars for each lot purporting to be a cental or hundredweight which contains less than one hundred pounds.

**Section 224.** If a weigher or deputy weigher uses, or has in his possession with intent to use, for the purposes provided in sections two hundred and nineteen to two hundred and twenty-two, inclusive, any false weight, scale, balance or other instrument for weighing, or colludes with the purchaser or seller with intent to defraud the other party, or makes and utters a false and fraudulent certificate under sections two hundred and nineteen to two hundred and twenty-two, inclusive, he may be removed from office by the aldermen or selectmen, and shall also on conviction thereof be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months.

## HAY

**Section 236.** If a town or the city council of a city accepts this section or has accepted corresponding provisions of earlier laws, the mayor or selectmen may from time to time appoint, for a term not exceeding one year, and may at any time remove, weighers of hay, who shall be sworn to the faithful performance of their duty and who shall have the superintendence of the hay scales belonging to such city or town, and shall weigh hay offered for sale therein and any other article offered to be weighed. Cities and towns may establish ordinances and by-laws for the regulation of hay scales and of the compensation of weighers of hay. Whoever, not having been so appointed, sets up hay scales in a city or town for the purpose of weighing hay or other articles offered to be weighed shall forfeit to the use of such city or town twenty dollars a month, so long as such scales are maintained.

## TIMOTHY OR HERDSGRASS SEED

**Section 237.** Except as otherwise provided in chapter ninety-nine, all contracts for the sale and delivery of timothy or herdsgrass seed shall be made by avoirdupois weight. Whoever violates this section shall be punished by a fine of not more than twenty dollars

## COAL, COKE, CHARCOAL AND KINDLING WOOD

**Section 238.** The mayor or selectmen shall annually appoint, and may remove, weighers of coal, one of whom at least shall not be engaged in the business of selling coal, who shall be sworn to the faithful performance of their duty, and by whom all coal shall be weighed. No person shall be ineligible for appointment in a town because of the fact that he is not a resident thereof, notwithstanding any provisions to the contrary in any city charter. Women shall be eligible for appointment as weighers of coal.

**Section 239A.** The director of standards shall from time to time by rule or regulation establish standard sizes for anthracite coal offered for sale within the commonwealth, with variances or tolerances not to exceed five per cent determined by weight.

Note: Code of Massachusetts Regulations  
Division of Standards 202 CMR 2.03

**Section 240.** Coal shall be sold by weight, and, except when sold by cargo, two thousand pounds avoirdupois shall be the standard for the ton. Coke and charcoal in any quantities shall be sold only by weight or measure.

**Section 241.** Coal in quantities of one hundred pounds or less shall be sold by weight, and coke and charcoal in quantities of one hundred pounds or less shall be sold by weight or measure, in bags, sacks or baskets, and until delivered shall be kept in the same bags, sacks or baskets in which they were weighed or measured; and coal, coke and charcoal thus sold shall be exempt from section two hundred and forty-four. When sold by weight, such bags, sacks or baskets shall be plainly marked with the name and business address of the person who puts up the same, and with the weight of the coal, coke or charcoal therein in letters and numerals, respectively, of bold uncondensed type at least one inch in height. Coal that is packaged in any manner in advance of sale at retail shall be plainly and conspicuously marked with the name and business address of the person who puts up same, a statement of the net weight of the coal contained therein, a classification of such coal whether anthracite, semi-anthracite, bituminous containing less than twenty-three per cent volatile matter or bituminous containing more than twenty-three per cent volatile matter, and the size of the coal contained therein.

**Section 242.** Baskets or similar receptacles used in selling coke, charcoal or unpacked kindling wood by measure shall be of one bushel or multiple thereof, Massachusetts standard dry measure, shall have their capacity plainly marked thereon, shall be sealed by a sealer of weights and measures of the town or district where the vendor resides or conducts his business, and shall be filled at least level full when well shaken.

**Section 243.** Paper bags or sacks used or intended to be used in the sale of coke, charcoal or kindling wood by measure shall be not less than twenty-five inches in height, not less than thirteen and one half inches in width, and the bottoms shall not be less than four and three quarters inches wide. They shall be filled to a point not more than six inches from the upper end. Bags of unpacked kindling wood or of coke or charcoal sold or offered for sale by measure shall contain, and shall be sold as containing, one half bushel, Massachusetts standard dry measure. Bags and sacks shall be plainly marked with the name and business address of the person putting up the same, and the words "one half bushel" in bold, uncondensed, capital letters at least one inch in height. Whoever himself or by his servant or agent or as the servant or agent of another sells or offers for sale a paper bag or sack to be used in the sale of coke, charcoal or kindling wood by measure which does not conform in every particular to the requirements of this section shall be punished by a fine of not more than one hundred dollars.

**Section 244.** Whoever, except as provided in section two hundred and forty-one, sells coke, charcoal or coal by weight, or whoever sells material for road construction by weight, shall without cost to the purchaser cause the goods or material to be weighed by a sworn weigher of the town where they are weighed, and shall cause to be signed by the weigher a certificate stating the name and place of business of the seller, and either the identifying number, of which a permanent record shall be kept, or the name of the person taking charge of the goods or material after the weighing as given to the weigher on his request, the tare weight, and the quantity of the goods or material. Such certificate shall be given to said person and shall be given by him only to the owner of the goods or material or his agent when he unloads the same; and each such person, on request and without charge therefor, shall permit the director of standards, or any inspector of standards in any town, or any sealer of weights and measures of any town, to examine the certificate and to make a copy thereof.

**Section 245.** The director of standards or any inspector of standards in any town, or a sealer of weights and measures within his town, wherein any quantity of coke, charcoal or coal or material for road construction in the course of delivery is found may direct the person in charge of the goods or material to convey the same without delay or charge to scales designated by such director, inspector or sealer, who shall there determine the quantity of the goods or material, and, except in the case of coke, charcoal or coal in baskets or bags as required by section two hundred and forty-one, shall determine their weight together with the tare weight, and shall direct said person to return to such scales immediately after unloading the goods or material; and upon such return, the director, inspector or sealer shall determine the tare weight. The scales designated by the director, inspector or sealer as aforesaid may be the public scales of the town or any other scales therein which have been duly tested and sealed and shall be such scales as in his judgment are most convenient.

**Section 246.** Each sealer of weights and measures of a town and each sworn weigher shall keep in a book used by him solely for that purpose a record of all baskets sealed by him as aforesaid, and of all weighings and determinations of quantities of coke, charcoal or coal or material used for road construction made by him as aforesaid. Such record shall be made at the time of measuring or weighing, and shall state the day and hour of the measuring or weighing, the name and place of business of the vendor, the name of the owner of the baskets or of the purchaser of the goods or material as given to him on his request by the person taking charge of the baskets or of the goods or material after weighing or measuring, the capacity of the baskets measured or quantity of the goods or material determined, and the name of said person; and, in the case of a reweighing as provided in section two hundred and forty-five, shall state the weight as given in

the certificate and as determined by him. No charge shall be made by any such sealer for anything done under this section and sections two hundred and forty-four and two hundred and forty-five.

**Section 247.** Edgings or kindling wood shall not be sold in bundles unless the same are closely packed and are not less than twenty-seven inches in circumference. Kindling wood may be sold in bulk by the load; but if unpacked shall not be sold unless by measure and, if exceeding six inches in length, shall not be sold in bags or sacks.

**Section 248.** Whoever violates any provision of sections two hundred and forty to two hundred and forty-seven, inclusive, if no other penalty is provided therein, or of a rule or regulation made under section two hundred and thirty-nine A, or fails to comply with any request for information or direction made under authority of sections two hundred and forty, two hundred and forty-one, and two hundred and forty-four to two hundred and forty-six, inclusive, or gives a false answer to any such request, shall be punished by a fine of not more than fifty dollars; and whoever is guilty of fraud or deceit as to the weighing, selling or delivering of coke, charcoal or coal, or the measuring, selling or delivering of fuel oil or range oil, or whoever, by himself, or by his servant, agent or employee, sells or delivers or attempts to sell or deliver coal or coke which is short in weight or coal which contains an unreasonable amount of shale, slate, rock or other foreign substance or which produces an excessive amount of non-combustible residue, including ash, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both. The director of standards and local sealers of weights and measures shall cause sections two hundred and forty-two to two hundred and forty-nine, inclusive, and rules and regulations made under section two hundred and thirty-nine A, to be enforced.

**Section 249.** A vendor of coal, coke, charcoal or kindling wood, who has in his possession a basket, bag, sack or other measure which does not conform in every particular to the requirements respecting such measure, with intent to use or permit it to be used in measuring coal, coke, charcoal or kindling wood sold or offered for sale, shall be punished by a fine of not more than twenty dollars, and such basket, bag, sack or measure shall be destroyed.

**Section 249A.** The department of public health, local boards of health, the director of standards and local sealers of weights and measures, by themselves or by their authorized agents, may enter each place where coal is stored or kept for sale and each railroad train or car or any vehicle used for its conveyance and may inspect said coal or take therefrom samples for analysis or inspection. Said department or board shall cause each sample taken to be analyzed, inspected or otherwise satisfactorily tested and shall record and preserve as evidence the results thereof. If, in the opinion of said department or board, upon inspection, analysis or other satisfactory test, said coal is unfit for ordinary use, said department, or said board with the approval of said department, may condemn, seize and cause the same to be destroyed forthwith or disposed of otherwise than for ordinary use. All money received by said department or board for coal disposed of as aforesaid, after deducting the expenses of said seizure and disposal, shall be paid to the owner of such coal.

**Section 249B.** Any person who hinders, obstructs or interferes with the department of public health, local boards of health, the director of standards, local sealers of weights and measures, or their authorized agents, in the performance of their duties under section two hundred and forty-nine A, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not less than one month nor more than one year, or both.

**Section 249C.** Whoever, by himself, or by his servant, agent or employee, sells, exposes or offers for sale, or has in his custody or possession with intent to sell, coal condemned under the provisions of section two hundred and forty-nine A shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not less than one month nor more than one year, or both.



**Section 249D.** Whoever, by himself, or by his servant, agent or employee, sells, exposes or offers for sale, or has in his custody or possession with intent to sell, coal unfit for ordinary use shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

**Section 249E.** Whoever, by himself, or by his servant, agent or employee, in placing or packing coal in any basket, bag, sack or other receptacle, places or causes to be placed therein any foreign substance, or sells, or exposes or offers for sale, or has in his custody or possession with intent to sell, coal placed or packed in a basket, bag, or sack or other receptacle containing an unreasonable amount of any foreign substance or producing an excessive amount of non-combustible residue, including ash, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

**Section 249E½.** It shall be presumed in a prosecution under section two hundred and forty-eight or section two hundred and forty-nine E that the non-combustible residue, including ash, is excessive if a test, as determined by the current standard method of tests for sampling and analysis for coal and coke as published by the American Society for Testing Materials and designated as D 271, with the year of publication, produces non-combustible residue, including ash, in excess of the following percentages:

Trade Term	Maximum Non-Combustible Residue, Including Ash (Dry Basis) (Per Cent)
Broken	12.5
Egg	12.5
Stove	13.5
Chestnut	14.0
Pea	15.5

**Section 249F.** The department of public health, local boards of health, the director of standards and local sealers of weights and measures shall cause sections two hundred and forty-nine A to two hundred and forty-nine E ½, inclusive, to be enforced.

#### HEATING OILS

**Section 249H.** The director of standards shall promulgate rules and regulations establishing standards for the various grades of heating oils, requiring manufacturers or distributors to furnish samples of the same, and providing for the entry and inspection of the premises of such manufacturers or distributors, and the inspection of heating oils stored thereon. Whoever violates any rule or regulation promulgated under the provisions of this section shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months, or both.

Code of Massachusetts Regulations  
Division of Standards 202 CMR 2.11

#### NAILS

**Section 278.** Wrought, cut or wire nails and brads of all sizes manufactured in the commonwealth shall be well made, packed free from waste pieces of iron unless they are refuse nails or brads, and free from any

fraudulent mixture increasing the weight, in strong and sufficient casks of season timber, well hooped, containing not more than three hundred pounds each.

**Section 279.** Each cask of wrought, cut or wire nails or brads shall be marked or branded on the head by the manufacturer, in plain, legible letters in the English language, with his name and the net weight of the contents of the cask.

**Section 280.** If a cask, package or quantity of wrought, cut or wire nails or brads, manufactured in the commonwealth or elsewhere and not branded or marked as provided in the preceding section, is offered or exposed for sale within the commonwealth or put on board a vessel or vehicle, unless to be carried out of the commonwealth, it shall be forfeited.

**Section 281.** Whoever counterfeits a brand used or intended to be used for the purpose of marking a cask of nails or brads, or destroys or alters a mark or impression made by another's brand on a cask of wrought, cut or wire nails or brads, and causes a different impression by such counterfeit brand to be marked or impressed thereon, or shifts any such nails or brads from one branded cask to another and thereby avails himself of another's brand, shall forfeit twenty dollars.

**Section 282.** All forfeitures recovered under the two preceding sections shall be divided equally between the informer and the commonwealth.

#### SLOT MACHINES, ETC.

**Section 283.** No person shall maintain any slot machines or other automatic device, except gas meters, electric meters and telephones, which, upon the deposit therein of any coin or other article of value, furnishes music, or other entertainment, exhibits pictures, provides facilities for weighing, supplies any merchandise or other thing, or renders any service, or is represented to do or perform any of the above mentioned things, unless such machine or device is of a type approved by the director of standards; but no person maintaining such machine or device with respect to which, or to the operation, service or supply of which, there is any element of chance shall be protected or be entitled to immunity from prosecution because of such approval.

**Section 284.** Whoever installs or maintains a machine or device mentioned in the preceding section which is of a type not approved as therein provided shall, if such machine or device fails properly to respond to the insertion or deposit therein of a coin or other article of value, be punished by a fine of not more than twenty-five dollars.

#### THREAD

**Section 285.** It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell any sewing, basting, mending, darning, crochet, tating, hand-knitting or embroidery thread, put up or packaged in advance of sale in or on any form of unit, for either wholesale or retail sale, unless such unit be definitely, plainly, and conspicuously marked to show its net measure in terms of yards or its net weight in terms of avoirdupois pounds or ounces.

Any unit of such thread, the net weight of which is less than two ounces avoirdupois, shall be marked to show its net measure in terms of yards as unwound from the ball or from the spool or other holder. Ready-wound bobbins which are not sold separately shall not be required to be individually marked, but the package containing such bobbins shall be marked to show the number of bobbins contained therein and the

net weight or measure of the thread on each bobbin. Any retail unit of thread, sold only for household use, consisting of a package containing two or more similar individual units, which are not sold separately, shall be marked to show the number of individual units in the package and the net weight or measure of the thread in each individual unit, but this proviso shall not apply where the individual units are separately marked.

**Section 286.** The marking as required in section two hundred and eighty-five shall in all cases be in combination with the name and place of business of the manufacturer or distributor of the thread, or a trade mark, symbol, brand or other mark which positively identifies such manufacturer or distributor, and which shall be filed with the director of standards.

**Section 287.** An average of not less than ten units of thread of the same type and put-up, selected at random from such units referred to in section two hundred and eighty-five, kept for the purpose of sale, offered or exposed for sale, or sold, shall not weigh or measure more than three percentum less than the net weight or number of yards marked on such units or on the package containing such units.

**Section 288.** A manufacturer, merchant, jobber, or trader who keeps for the purpose of sale, offers or exposes for sale, or sells any such units of thread which either are not marked or do not weigh or measure as provided in sections two hundred and eighty-five to two hundred and eighty-seven, inclusive, shall be punished by a fine of not more than fifty dollars.

## PETROLEUM PRODUCTS

### Section 295A: Definitions

**Section 295A.** When used in sections two hundred and ninety-five A to two hundred and ninety-five W, inclusive:-

(1) The term "retail dealer" shall mean any person operating a service station, filling station, store, garage or other place of business for the retail sale of motor fuel or automotive lubricating oil or the sale of or dispensing of motor fuel for delivery into the service tank or tanks of any motor vehicle which is propelled by an internal combustion motor other than such a motor vehicle belonging to the person owning or operating said place of business.

(2) The term "motor fuel" shall mean (a) a light distillate of petroleum or allied substance with suitable volatility and other characteristics to be used as a fuel for operating internal combustion engines, whether or not it is mixed with other materials, or (b) any other product or liquid when sold for use as a fuel in any type of internal combustion engine furnishing power to operate a motor vehicle.

(2A) The term "automotive lubricating oils" shall mean any oil sold or offered for use as a fluid lubricant in any type of internal combustion engine used to propel any motor vehicle.

(3) The word "department" shall mean the department of labor and workforce development.

(4) The word "division" shall mean the division of standards in the office of consumer affairs and business regulation.

(5) The term "deputy director" shall mean the deputy director of standards in the office of consumer affairs and business regulation.

(6) The term "cost to the retail dealer" shall mean the cost of such motor fuel to the dealer plus the cost of doing business, including that part of the overhead of such dealer properly attributable to the sale of such motor fuel according to generally accepted methods of accounting procedure, which overhead shall include without limitation, labor (including the salaries of proprietors and corporate officials and others or a reasonable value for the services of such where no direct wage or salary is paid to them), rent (or a reasonable return on capital invested in real property used in said business) depreciation, selling costs (including gifts or premiums or other valuable considerations passing from the dealer to the purchaser in connection with the sale of motor fuel), maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising.

#### Section 295B: Licensing of Retail Dealers

**Section 295B.** No retail dealer shall engage in the business of selling motor fuel or automotive lubricating oil at retail without first procuring from the division a license for each station, store, garage or other establishment at which his said business is to be conducted. Licenses issued under this section shall be issued upon written application to the division, shall be issued only to persons who own the business to be licensed and who are the owners or lessees of the premises on which the business is to be conducted, shall be effective from the date of their issuance until the first day of January of the ensuing year, and shall be renewed annually. A license fee as determined annually by the commissioner of administration under the provision of section three B of chapter seven shall be paid for the issuance of every such license and every renewal thereof.

Each licensee shall conspicuously display his license at the station, store, garage or other establishment to which it pertains. The requirements of this section with respect to licenses are hereby declared to be in addition to, and not in substitution for, license requirements contained in any other statute, ordinance, by-law, rule or regulation.

The division shall forthwith notify the commissioner of revenue in writing of all licenses issued, renewed, transferred, modified, cancelled or suspended by it.

#### Section 295C: Display of Price of Motor Fuel on Dispensing Devices

**Section 295C.** A retail dealer of motor fuel shall publicly display and maintain on each pump or other dispensing device from which motor fuel is sold by him, at least 1 sign, clearly visible, stating the price per gallon of each grade of motor fuel sold from the pump or device. A sign shall be not less than 8 inches by 10 inches in size. The price shown on a sign shall include all taxes imposed with respect to the manufacture or sale of the motor fuel sold at that pump or device and shall contain either a statement of the taxes included in the price or, without specifying the amount of the taxes, shall state that such taxes are included in the price. All figures, including fractions, on a sign, other than figures and fractions used in a price computing mechanism and constituting a part of a pump or dispensing device, shall be the same size.

No sign, advertising material or other display or product that is placed upon, above or around a pump or dispenser shall directly or indirectly obscure the posted price sign as required by the preceding paragraph.

#### Section 295CC: Handicapped Persons; Motor Fuel Dispensing

**Section 295CC.** Every licensed retail motor fuel dealer who offers for sale from both full-service and self-service motor fuel pumps or other dispensing devices from which motor fuel is sold at the same location, shall dispense motor fuel from the self-service pump or device for any owner-operator of a motor vehicle

bearing handicapped person or disabled veteran number plates as described in section two of chapter ninety. Any such retail motor fuel dealer shall display in a prominent location one or more signs stating its compliance with the provisions of this section. The division of standards shall develop standards for such signs including, but not limited to, size, text, legibility and location.

#### Section 295D: Advertisement of Motor Fuel

**Section 295D.** Any advertisement of motor fuel other than those required in section 295C shall display the total price including all taxes.

Section 295E: Posting price on pump or other dispensing device; duration; selling price; rebates, premiums, etc.; restrictions; penalties; inapplicability to self-service pump dispensing

**Section 295E.** The price posted on any pump or other dispensing device from which motor fuel is sold, as required by section two hundred and ninety-five C, shall remain posted thereon and continue in effect thereat for a period of not less than twenty-four consecutive hours. No retail dealers shall sell motor fuel at any price other than the price so posted at the time of the sale. No premiums, rebates, allowances, concessions, prizes or other benefits shall be given directly or indirectly by any retail dealer so as to permit any purchaser to obtain motor fuel from such retail dealer at a net price lower than the posted price applicable at the time of the sale. In no transaction in which a retail dealer may fix or set a single price or charge for the sale of a quantity of motor fuel, together with some other commodity or service, shall such single price or charge be less than the aggregate of the charge, in accordance with the posted price, for the motor fuel involved in the transaction, plus the charge for such other commodity or service when the same is sold or rendered separately, rather than in combination with the sale of motor fuel.

Any retail dealer who sells and delivers motor fuel to a customer from a dispensing device, shall return the quantity indicator on the meter face to zero before each delivery by either automatic or manual means. A retail dealer shall not set the price indicator on the meter face of the dispensing device at a price per gallon higher than that posted on the dispensing device. Whoever violates any provision of the preceding two sentences shall, notwithstanding any contrary provision of section two hundred and ninety-five K, be punished by a fine of fifty dollars for the first offense and by a fine of one hundred dollars for each subsequent offense. The provisions of the first sentence of this paragraph shall not apply to motor fuel which is dispensed from a self-service pump operated by a customer.

**Note: Section 295E. First paragraph is unenforceable due to a state Supreme Court decision which emasculated the first paragraph.**

Section 295F: Marking of brand name, etc., of product on above-ground storage or dispensing equipment

**Section 295F.** All above-ground equipment for storing or dispensing motor fuel or automotive lubricating oil operated by a retail dealer shall bear in a conspicuous place the brand name or trade-mark of the product stored therein or sold or dispensed therefrom. If the motor fuel or automotive lubricating oil stored in or sold or dispensed from above-ground equipment by a retail dealer has no brand name or trade-mark, such container or dispensing equipment shall have conspicuously displayed thereon the words "'No Brand'".

All equipment or containers used for the storage or dispensing of automotive lubricating oils made in whole or in part from previously used lubricating oils shall have displayed thereon the words "'made from previously used lubricating oils'". The size of the letters in said words shall be not less than size fourteen

point type on two-gallon cans, or those holding a lesser quantity, and one inch high on all larger containers, but in no case shall the letters be smaller than those in any other words in the same descriptive panel.

All automotive lubricating oil containers shall bear, in a conspicuous place on the container, a number indicating the viscosity classification of the contents, such classification to be determined according to such standard methods as the division may from time to time prescribe.

Section 295G: Standards for gasoline; adulteration or substitution of motor fuel or lubricating oil

**Section 295G.** No person shall sell or offer to sell as gasoline any motor fuel or other substance which has an end point higher than four hundred and thirty-seven degrees Fahrenheit, when tested according to such standard methods as may, from time to time, be prescribed by order, rule or regulation under section two hundred and ninety-five I.

No person shall adulterate or permit the adulteration of any motor fuel or automotive lubricating oil offered for sale or sold under a brand name or trade-mark or distinguishing mark of the manufacturer or distributor of said products, or substitute or permit the substitution of any other motor fuel or automotive lubricating oil therefor. No person shall sell or dispense, or offer to sell or dispense, from any pump, tank or other dispensing device or container any motor fuel or automotive lubricating oil other than that indicated by the name, trade name, trade-mark, symbol, sign or other distinguishing mark of the manufacturer or distributor of said product, if any, appearing on said pump, tank or other dispensing device or container.

Every manufacturer or distributor of motor fuel or automotive lubricating oil shall submit samples of said products when requested by the division.

No person shall sell or offer to sell any automotive lubricating oil for automotive purposes which does not conform with the viscosity classification marked on the container, such classification to be determined according to such standard methods as the division may from time to time prescribe.

No person shall sell or offer to sell as diesel motor fuel, any motor fuel or other substance which does not conform to standard specifications for diesel motor fuel when tested according to standard methods of testing. Such standard specifications and standard methods of testing may be prescribed by order, rule or regulation promulgated under the provisions of section two hundred and ninety-five I.

Section 295H: Administration and enforcement of Secs. 295A to 295O

**Section 295H.** The division and any representative authorized by the director of standards and any person authorized under section 34, 35 or 36 of chapter 98 shall administer and enforce sections two hundred and ninety-five A to two hundred and ninety-five O, inclusive. For said purpose, the department, subject to appropriation, may appoint to the division such additional investigators, inspectors, analysts, clerks and other assistants as it may deem necessary.

Section 295I: Orders, rules and regulations; adoption; amendment; repeal

**Section 295I.** The division may adopt, amend, alter or repeal, and shall enforce, all such reasonable orders, rules and regulations as may be necessary or suitable for the administration and enforcement of said sections two hundred and ninety-five A to two hundred and ninety-five O, inclusive, and the division may, in such administration and enforcement, at any time cause to be made by its agents or representatives an audit, examination or investigation of the books, records, papers, vouchers, accounts and documents of any retail

dealer, who shall make them available at any time upon oral or written demand to the division or any of its duly authorized agents or representatives.

#### Section 295J: Records of Retail Dealer

**Section 295J.** Every retail dealer shall keep such records as may be prescribed by the orders, rules or regulations adopted by the division under section two hundred and ninety-five I, and all such records shall be safely preserved by such retail dealer for a period of one year, and shall be offered for inspection at any time upon oral or written demand by the division or any of its duly authorized agents or representatives.

#### Section 295K: Penalty for Violation of Sections 295A-295J

**Section 295K.** Whoever, himself or by his agent or servant, violates any provision of sections two hundred and ninety-five A to two hundred and ninety-five J, inclusive, except section two hundred and ninety-five G, shall be punished by a fine of not less than fifty nor more than five hundred dollars or shall be subject to a civil citation as provided in section 29A of chapter 98. Whoever, himself or by his agent or servant, violates any provision of section two hundred and ninety-five G shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year. Upon the second conviction of any licensee of any such violation, whether by himself or by his agent or servant, the division may suspend the right of such licensee to engage in the business of selling motor fuel at retail for a period not exceeding three months, and upon the third or subsequent conviction of any licensee of any such violation, whether by himself or by his agent or servant, the division may suspend such right for a period not exceeding one year.

#### Section 295L: Jurisdiction of Superior Court; Injunctions

**Section 295L.** The superior court shall have jurisdiction in equity to enjoin the habitual, continued or repeated violation of any provision of sections two hundred and ninety-five A to two hundred and ninety-five J, inclusive, by any retail dealer. Petitions for such relief may be filed by any person injured or damaged by such violation.

#### Section 295M: Conflicts with other laws

**Section 295M.** Whenever the application of any provision of any other law of this commonwealth conflicts with the application of any provision of sections two hundred and ninety-five A to two hundred and ninety-five O, inclusive, said sections shall prevail.

#### Section 295N: Partial invalidity

**Section 295N.** If any provision of said sections two hundred and ninety-five A to two hundred and ninety-five O, inclusive, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of said sections, or the application of such provision to any person or circumstance other than that as to which it is held invalid, shall not be affected thereby.

#### Section 295O: Citation of Sections 295A - 295O; Motor Fuel Sales Act

**Section 295O.** Sections two hundred and ninety-five A to two hundred and ninety-five O, inclusive, shall be known and may be cited as the ""Motor Fuel Sales Act.""

#### Section 296: Measurers of wood and bark

**Section 296.** A town and the city council of a city shall annually choose one or more measurers of wood and bark, who shall be sworn to the faithful performance of their duties and shall hold office during the year and until others are chosen and qualified in their stead. A town, by vote fixing the number to be chosen, may delegate the appointment of such measurers to the selectmen.

**Section 297.** Such measurers may, in the manner prescribed for measurers of lumber in section eight of chapter ninety-six, be licensed to act in a town adjoining that for which they are elected or appointed.

#### Section 298: Sale of cordwood; dimensions; standard units of measure defined

**Section 298.** Cordwood sold or offered or exposed for sale shall be four feet in length. The term "firewood" shall be construed to mean and include wood cut to any lengths of less than four feet and more than eight inches. Cordwood and firewood shall be advertised, offered for sale and sold only in terms of cubic feet or cubic meters which will be construed as indicating the closely stacked cubic foot or cubic meter content to be delivered to the purchaser. The terms "cord", "face cord", "pile", "truckload" or terms of similar import shall not be used in the advertising and sale of cordwood or firewood. The term "kindling wood" shall be construed to mean and include all split wood, edgings, clippings or other waste wood averaging eight inches in length. Except as provided by sections two hundred and forty-three and two hundred and forty-seven, the standard unit of measure for kindling wood shall be the bushel of two thousand one hundred and fifty and forty-two hundredths cubic inches.

#### Section 299: Delivery ticket or sales invoice

**Section 299.** Whoever, except as otherwise provided, sells cordwood or firewood, shall cause a delivery ticket or sales invoice to be issued and delivered to the purchaser or his agent at the time of delivery of the wood. Such delivery ticket or sales invoice shall include the name and address of the seller and the purchaser, the quantity delivered to the purchaser in terms of cubic feet or cubic meters, the date delivered and the price of the quantity of wood delivered. Whoever violates any provision of this or the preceding section shall be punished for the first offense by a fine of fifty dollars, for the second offense by a fine of two hundred dollars and for each subsequent offense by a fine of five hundred dollars. Whoever alters or substitutes a delivery ticket or sales invoice for fraudulent or deceptive purposes shall be punished by a fine of not more than one thousand dollars or shall be subject to a civil citation as provided in section 29A of chapter 98.

**Section 300.** Measurers of wood and bark shall be entitled to such fees for their services as the aldermen or selectmen shall establish; and the fees shall in each case be paid to the measurer by the driver and shall be repaid by the purchaser.

#### Section 301: Measurement of water borne wood; fees

**Section 301.** Cord wood brought by water into a town for sale, and landed, shall be measured by a public measurer; and for that purpose the wood shall be corded and piled by itself in ranges, making up in height what is wanting in length, and, being so measured, a ticket shall be given to the purchaser, who shall pay the stated fees for such service. Towns may establish ordinances and by-laws, with suitable penalties, for the inspection, survey, measurement and sale of wood and bark for fuel brought therein for sale, and may also provide for the appointment of inspectors, surveyors and other officers and establish their fees.



**Section 302.** Each wharfinger, carter or driver who conveys firewood or bark from a wharf or landing place shall be furnished by the owner or seller with a ticket certifying the quantity which the load contains and the name of the driver; and if firewood or bark is thus conveyed without such ticket accompanying the same, or if a driver refuses to produce and show such ticket to any sworn measurer on demand, or to give his consent to have the same measured, or if such ticket certifies a greater quantity of wood or bark than the load contains in the opinion of such measurer after measuring the same, the driver and owner shall for each load thereof severally forfeit five dollars. Sections two hundred and ninety-six to three hundred and three, inclusive, shall not apply to a person who transports or carts or causes to be transported or carted from a wharf or landing place to his own dwelling house or store cord wood or bark which he has purchased on a wharf or landing place, or which he has landed thereon upon his own account.

**Section 303.** The city council of a city may establish ordinances, with suitable penalties not exceeding five dollars for any one violation thereof, for the regulation of the sale of prepared wood, slabs and edgings for fuel, when sold by the load, and for the inspection, survey, measurement and sale of bark for fuel or manufacturing purposes brought into said city for sale, whether the same is exposed for sale in ranges or upon a vehicle; and said city may provide for the appointment of such surveyors, inspectors and other officers as may be necessary to carry into effect said ordinances and may establish their fees.

#### FUEL OIL

Section 303F: Fuel oils or propane; delivery tickets; contents; use of copies; inspections; evidence; penalties

**Section 303F.** Whoever sells or delivers fuel oils or propane in quantities of twenty gallons or over for heating or cooking purposes shall cause a delivery ticket, which shall consist of an original and at least one carbon copy thereof, to be issued. Said ticket shall be serially numbered for the purpose of identification and shall have the date of delivery as well as the names and addresses of the seller and of the purchaser legibly recorded on the ticket prior to delivery of the fuel oil or propane. A statement of quantity of fuel oil or propane delivered, in terms of gallons and fractions thereof, if any, the price per gallon, the grade of fuel, and the identity of the person making such delivery, shall also appear on the ticket. One copy of said ticket shall be delivered to the purchaser or his agent at the time of delivery of such fuel oil or propane unless the purchaser initiates a request in writing that the vendor deliver such ticket to another person or location, or that the delivery of such ticket be made at another time. Another copy of the ticket shall be retained by the seller for a period of two months. The director or inspector of standards, sealer or deputy sealer, inspector or deputy inspector of weights and measures shall, at the time of delivery of fuel oil or propane, be authorized to enter and go into or upon, without warrant, any such vehicle to inspect or examine the metering system, vehicle tank compartments and delivery tickets then in the actual possession or under the control of the person making the delivery and may seize, without warrant, any such delivery tickets suspected of constituting a deceptive or fraudulent practice. No copy or retained delivery ticket shall be destroyed but may be voided and kept on file.

On deliveries of fuel oils and propane made through a meter, the quantity determinations of the fuel oil or propane delivered, shall be mechanically printed on the ticket at the time of delivery. A sales sequence number shall also be mechanically printed on the ticket by the ticket printing mechanism of the metering system, unless the printing mechanism is of the cumulative type. The sales sequence number shall not be returnable to zero until it has reached its highest attainable number.

Only one delivery ticket may be inserted into the ticket printing mechanism and in the case of vehicle tank meters said ticket shall not be inserted until immediately before a delivery is begun, and in no case shall a ticket be left in the printing mechanism when the vehicle is in motion while on a public street, highway, or

thoroughfare. The possession of a preprinted ticket imprinted with a gallonage amount in advance of delivery shall be prima facie evidence of intent to use such ticket in violation of this section.

Deliveries of fuel oil made from vehicle tank compartments, not measured at the time of sale by a sealed metering system, shall be made only from calibrated compartments which are filled to an indicator that has been sealed by a sealer or inspector of weights and measures. The preceding sentence shall not apply to the transfer, exchange or sale of fuel oil which is being transported between bulk storage facilities or to a purchaser who initiates a request in writing that he wishes to accept a carbon copy of the bulk storage metered loading ticket.

Whoever violates any provision of this section shall be punished for the first offense by a fine of fifty dollars, for the second offense by a fine of two hundred dollars and for each subsequent offense by a fine of five hundred dollars or shall be subject to a civil citation as provided in section 29A of chapter 98. Whoever alters or substitutes a delivery ticket for fraudulent or deceptive purposes shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year or both.

## ANTI-FREEZE SOLUTIONS

### Section 303G: Definitions

**Section 303G.** As used in this section and sections three hundred and three H to three hundred and three L, inclusive, the following words shall, unless the context otherwise requires, have the following meanings:-

""Anti-freeze", any substance or preparation intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point.

""Division", the division of standards in the office of consumer affairs and business regulation.

### Section 303H: Anti-freeze; minimum standards; adulteration

**Section 303H.** The division shall establish minimum standards of strength and quality for anti-freeze. An anti-freeze shall be deemed to be adulterated if it consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user; or if its strength, quality, or purity falls below the minimum standards of strength and of quality, as established by the director of the division.

Note: Code of Massachusetts Regulations, Division of Standards 202 CMR 2.10

### Section 303I: Misbranded anti-freeze; labels for containers

**Section 303I.** An anti-freeze shall be deemed to be misbranded if its labeling is false or misleading in any particular; or if sold in a container which does not bear a label containing the name and place of business of the manufacturer, packer, seller or distributor and an accurate statement of the quantity of the contents in terms of weight or measure on the outside of the container.

Section 303J: Inspection of sample; issuance and cancellation of permits

**Section 303J.** No anti-freeze shall be sold, offered for sale, or held with intent to sell within the commonwealth unless a sample thereof has been inspected by the division and a permit for the sale thereof has been issued by the division. Upon application of the manufacturer, packer, seller, or distributor and the payment of a fee to be determined annually by the commissioner of administration under the provision of section three B of chapter seven for each brand of anti-freeze submitted, the division shall inspect such anti-freeze. If the anti-freeze is not adulterated or misbranded, the division shall give the applicant a written permit authorizing the sale of such anti-freeze within the commonwealth for a period expiring June thirtieth next.

If the division finds that any anti-freeze which is to be sold, offered for sale, or held with intent to sell has been altered or adulterated or that a change has been made in the name, brand or trade-mark under which said anti-freeze is to be sold, the division shall notify the licensee and cancel his permit forthwith.

Note: Fee for paragraph one is \$25.00

Section 303K: Enforcement; samples; inspection of premises, etc.

**Section 303K.** The division shall administer and enforce the provisions of sections three hundred and three G to three hundred and three J, inclusive, by inspections, chemical analyses, and other appropriate methods. All samples for analysis shall be taken from stocks within the commonwealth or intended for sale therein, and the division may call upon the manufacturer or distributor applying for a license for the sale of an anti-freeze to supply a sample thereof for analysis. The division shall have free access by legal means during business hours to all places of business, buildings, vehicles, cars and vessels used in the manufacture, transportation, sale or storage of any anti-freeze, and it may open by legal means any box, carton, parcel, or package containing or supposed to contain any anti-freeze and may take therefrom samples for analysis.

The division may make such analyses, inspections, and investigations, and may carry on research and may publish the reports of such analyses, inspections and research for the information of the public.

Section 303L: Rules and regulations

**Section 303L.** The division may promulgate such rules and regulations as are necessary to promptly and effectively enforce the provisions of sections three hundred and three G to three hundred and three K, inclusive.

Note: Code of Massachusetts Regulations, Division of Standards 202 CMR 2.10

Section 303M: Penalty

**Section 303M.** Whoever violates any provision of section three hundred and three J shall be punished by a fine of not less than one hundred nor more than five hundred dollars for each offense.

## GENERAL PROVISIONS AND PENALTIES

### Section 305: Fraud in packing commodities sold by weight; penalties

**Section 305.** Whoever, with intent to defraud or injure, in baling or in packing in any container any commodity sold by weight, including wool, leather, cotton, waste, rags and paper, places therein any substance foreign to the contents thereof shall be punished for the first offence by a fine of not more than one hundred dollars, for the second offence by a fine of not more than two hundred dollars, and for a subsequent offence by a fine of fifty dollars and imprisonment for not less than one nor more than three months.

## APPLIANCES

### Section 314: Definitions applicable to sec. 315 thru 318

**Section 314.** As used in sections three hundred and fifteen through three hundred and eighteen, inclusive, the following words and phrases shall, unless the context otherwise requires, have the following meanings:-

"Appliance", an air conditioner, refrigerator, freezer or refrigerator-freezer which is not used or secondhand;

"Class of appliances", all appliances performing similar functions;

"Consumer", a person who purchases an appliance for use by himself or others and not for resale as a new appliance;

"Deputy Director", the deputy director of standards;

"Director", the director of consumer affairs and business regulation;

"Subclass of appliances", those appliances within a class of appliances which are determined by the secretary to be comparable in size, capacity or capability.

### Section 315: Display, offer for sale, or sale of certain appliances prohibited

**Section 315.** No person shall display for sale to consumers or for promotional purposes an appliance required by the director to be labelled under the provisions of section three hundred and sixteen unless said appliance prominently bears a label complying with said provisions, and no person shall sell or offer for sale an appliance whose sale has been suspended under the provisions of section three hundred and seventeen.

### Section 316: Labels required; regulations; information; form, etc.

**Section 316.** The director may, in accordance with the provisions of chapter thirty A, adopt and amend regulations which require that each appliance in a class or subclass of appliances which is displayed for sale or for promotional purposes bear a label. The same regulations shall apply to each appliance in any subclass of appliances. The director may require said label to contain any or all of the following information, in such form as he may prescribe:- (1) the cost in dollars or units of energy or both of operating the appliance during a year or any part of said year as determined under section three hundred and seventeen; (2) any numerical measure of efficiency which accurately reflects the relative efficiencies of all appliances within

a class or subclass; and (3) a brief description of testing and computation procedures used to determine the above information.

The director shall prescribe the form of such labels and may establish procedures for their production, distribution and use, except that he may not require that any label be produced, distributed or affixed outside the commonwealth.

#### Section 317: Standardized computation and testing procedures; reports

**Section 317.** The director may, in accordance with the provisions of chapter thirty A, adopt regulations for standardized computation procedures to be used to determine the information described in section three hundred and sixteen. The same computation procedures shall apply to each appliance in any subclass of appliances. Such procedures may provide for the computation of a range of annual energy costs as well as a single figure. The director may apply such computation procedures to any subclass of appliances for which there is available accurate and recent information concerning the efficiency of at least eighty per cent of the appliances in said subclass that are sold in the commonwealth. The director may prescribe standardized testing procedures for any appliances from such a subclass for which such information is not available. The same testing procedures shall apply to each such appliance in any subclass of appliances. He may require the deputy director or manufacturers, distributors or importers to test such appliances in accordance with said standardized testing procedures and to report the results to him in such manner and within such time as he shall determine.

If a manufacturer, distributor, or importer fails to report such test results as required by the director or if such results are determined by the deputy director to be false or misleading, the director may order the suspension of sales of the affected appliance within not fewer than five days. Any person aggrieved by such order may demand a hearing concerning such order, which hearing shall be conducted by the director or his designee within forty-five days of such demand in accordance with the provisions of chapter thirty A. If the director finds that the test results were not false or misleading, he shall rescind the order immediately. If a manufacturer, distributor, or importer reports to the director new test results which the director determines to be correct and complete, the director shall rescind the order within fourteen days from receipt of such report.

#### Section 318: Penalties; violations of secs. 315 and 317

**Section 318.** Whoever knowingly violates the provisions of section three hundred and fifteen shall be punished for each offense by a fine of not more than five hundred dollars. Whoever knowingly provides false or misleading information required under the provisions of section three hundred and seventeen shall be punished for each offense by a fine of not less than one thousand dollars nor more than ten thousand dollars, or imprisonment for not more than one year, or both.

## CHAPTER 98

### WEIGHTS AND MEASURES

#### Section 2: Definitions

**Section 1.** In this chapter the following words, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:

“Deputy”, deputy sealer of weights and measures certified by the director.

“Deputy director”, deputy director of standards in the office of consumer affairs and business regulation.

“Inspector”, inspector of standards certified by the director.

“Sealer”, sealer of weights and measures certified by the director.

“Committee”, the certification within the division of standards. Said committee shall consist of the director of standards, and a designee from each of the following organizations: the Massachusetts Weights and Measures Association, the Eastern Massachusetts Weights and Measures Association, the Western Massachusetts Weights and Measures Association, and the city of Boston's department of inspectional services.

“Weighing or measuring device”, all weights, measures, scales, balance beams, vibrating steelyards, and weighing or measuring devices used for weighing or measuring any commodity bought, sold or exchanged or for hire or reward, computing scales and other devices having a device for indicating or registering the price as well as the weight or measure of a commodity offered for sale, taximeters and other forms of measuring devices used upon vehicles for determining the cost of transportation; and all machines and other forms of measuring devices used or intended to be used for determining the measurement of leather bought, sold or offered for sale.

#### Section 2: Relation of avoirdupois pound to troy pound

**Section 2.** The avoirdupois pound shall bear to the troy pound the relation of seven thousand to five thousand seven hundred and sixty. The hundredweight shall contain one hundred avoirdupois pounds, and the ton twenty hundredweight.

#### Section 3: State standards

**Section 3.** The following weighing and measuring devices now in the custody of the deputy director shall be the sole authorized standards, except as provided in sections four, nine and ten of this chapter, and in section one of chapter ninety-nine, and with the standards supplied under authority of said sections shall be called the state standards: a set of dry measures consisting of one half-bushel, eight, four, two and one quarts, one pint and one half-pint; a set of liquid measures consisting of one gallon, two and one quarts, one pint, two and one gills; a set of apothecaries' liquid measures consisting of one gallon, four, two and one pints, twelve, eight, six, four, three, two and one ounces, four, two and one drams, ten and five minims; a set of avoirdupois weights consisting of fifty, twenty-five, twenty, ten, five, four, three, two and one pounds, eight, six, four, three, two and one ounces, eight, six, four, three, two and one drams; a set of troy weights

consisting of five thousand, three thousand, two thousand, one thousand, five hundred, three hundred, two hundred, one hundred, fifty, thirty, twenty, ten, five, three, two and one penny-weights, ten, six, five, four, three, two and one grains, one half a grain, twelve, ten, six, five, four, three, two and one ounces, five tenths, four tenths, three tenths, two tenths, one tenth, five one-hundredths, four one-hundredths, three one-hundredths, two one-hundredths, one one-hundredth, five one-thousandths, four one-thousandths, three one-thousandths, two one-thousandths, one one-thousandth, five ten-thousandths, four ten-thousandths, three ten-thousandths, two ten-thousandths and one ten-thousandth of an ounce; a set of apothecaries' weights consisting of twelve, six, two and one ounces, four, two and one drams, two and one scruples, ten, five, four, three, two and one grains, one half, one quarter and one tenth grains; a yard measure and three sets of balances.

Such standards shall be kept by the deputy director, and he shall, at least once in five years, cause them to be compared with the standards of the United States government, and, if necessary, corrected to agree therewith.

#### Section 4: Additional state standards; replacement of weights

**Section 4.** The state standards shall also include all weighing and measuring devices received from the United States under the resolution of congress approved June fourteenth, eighteen hundred and thirty-six, and all other weighing and measuring devices received from the United States as standard weights and measures, and such as have been or shall be supplied by the commonwealth and certified by the national bureau of standards. Weighing and measuring devices procured to replace the standards shall be preserved in the same form and of the same dimensions as required of said standards, and the denominations thereof shall be marked thereon.

#### Section 5: Municipal standards

**Section 5.** Towns shall keep the following standard weights, measures and balances: A set of avoirdupois weights consisting of fifty, twenty-five, twenty, ten, five, four, two and one pounds, and eight, four, two, one, one half, one quarter, one eighth and one sixteenth ounces; a set of dry measures consisting of one half-bushel, one eight-quart, one four-quart, one two-quart, one one-quart, one pint and one half-pint; a set of liquid measures consisting of one gallon, one half-gallon, one quart, one pint, one half-pint and one gill; one balance, one yard measure; and each town hereafter incorporated shall be furnished by the director with a complete set of the foregoing standards. Each city and each shire town shall keep the meter and kilogram and the standard troy weights designated by the director.

#### Section 6: Safe keeping and preservation of town standards; insurance

**Section 6.** In every town the sealer shall, at the expense of the town, provide therein accessible places for the safe and suitable keeping and preservation of the standards furnished by the commonwealth, which shall be used only as standards. The sealer shall have the care and oversight thereof; shall see that they are kept in good order and repair; and if any are lost, destroyed or irreparably damaged, shall, at the expense of the town, replace them by similar standards. Towns may effect insurance on such standards for their own benefit.

**Section 7: Neglect to provide suitable place for keeping standards; loss or damage**

**Section 7.** Every such sealer who neglects to provide a suitable place for keeping such standards, or to keep them in good order and repair, or who suffers any of them through his neglect to be lost, damaged or destroyed, shall forfeit five hundred dollars.

**Section 8: Vibrating steelyards**

**Section 8.** Vibrating steelyards may be used if each beam and the poises thereof are annually tried, proved and sealed by a sealer or deputy.

**Section 9: State clinical standard thermometer; certification**

**Section 9.** A clinical standard thermometer supplied by the commonwealth and certified by the national bureau of standards for use by the commonwealth, shall be the state clinical standard thermometer. Nothing in the five following sections shall be construed as adopting or authorizing the adoption of any particular scale as the thermometer standard for this commonwealth.

**Section 10: Office clinical standard thermometers; verification; comparisons**

**Section 10.** The commonwealth shall also supply additional clinical standard thermometers necessary to carry out sections nine to fourteen, inclusive, to be known as office clinical standards. Such thermometers shall be verified by the deputy director upon their receipt and at least once in each six months thereafter, by direct comparison with the state clinical standard thermometer. The office clinical standards may be used in making comparisons of clinical thermometers under test.

**Section 11: Tolerances and specifications for clinical thermometers**

**Section 11.** The deputy director shall promulgate tolerances and specifications for clinical thermometers. A correct clinical thermometer shall be one conforming to the standard established as provided in section nine and to specifications promulgated under this section, within such tolerances.

**Section 12: Inspection and testing of clinical thermometers; certification; fees**

**Section 12.** The deputy director may at any time inspect and test any clinical thermometer in the possession of any manufacturer or dealer in this commonwealth and for this purpose may remove the same to such place as he may deem most convenient. Whenever he inspects and tests such a thermometer and finds it to be correct he shall certify it as correct. Whenever he inspects and tests such a thermometer and finds it to be incorrect he may condemn, seize and destroy it; or he may return it to the owner upon a satisfactory guarantee that it will not be sold or used.

Fees, as determined annually by the commissioner of administration under the provision of section three B of chapter seven, for testing clinical thermometers shall be paid to the deputy director for the use of the commonwealth.



Section 13: Manufacture and sale of clinical thermometers

**Section 13.** The deputy director shall prescribe rules and regulations governing the manufacture and sale of clinical thermometers and may require representative samples of any clinical thermometer to be submitted by the manufacturer to the deputy director and approved by him. Clinical thermometers shall be marked with the name, initials or trade mark of the manufacturer. The deputy director may revoke the authority given by him to any manufacturer under the provisions of this section upon proof that the prescribed rules and regulations have not been complied with.

Section 14: Penalties for violation of sec. 13

**Section 14.** Whoever, himself or by his servant or agent, or as the servant or agent of another person, keeps for the purpose of sale, offers or exposes for sale, or sells any clinical thermometer not sealed, marked or certified as correct by the deputy director, or by the manufacturer as provided by the preceding section, shall be punished by a fine of not more than ten dollars for each thermometer so sold, or kept, offered or exposed for sale, and whoever violates any rule or regulation prescribed by the deputy director under authority of said section shall be punished by a fine of not more than fifty dollars.

Section 14A: Glass bottle or jars for lubricating oil; quality; capacity; sealing; revocation of authority; false or insufficient measure; inspection of bottles or jars

**Section 14A.** Glass bottles or jars intended to be used in the sale of lubricating oil shall be made of clear, uncolored glass and shall be manufactured only in the following capacities: one gallon, two quarts, one quart, or one pint, Massachusetts standard liquid measure. Each bottle or jar shall have its capacity clearly blown in the glass and shall be sealed by the manufacturer thereof, as hereinafter provided, or by a sealer of the town where the user resides or has a usual place of business. The deputy director shall prescribe regulations, including specifications and tolerances, governing the sealing of such bottles or jars by the manufacturer and may authorize such sealing by any manufacturer upon his written agreement to comply with such regulations. The deputy director may at any time, for cause, revoke the authority so given by him to any manufacturer. When sealed by the manufacturer, such bottles or jars shall have clearly blown therein his name, initials or trade mark, and any other designating marks which the deputy director may authorize or require. The sealing of such bottles or jars by the manufacturer shall not exempt the user from the laws relating to the giving of false or insufficient measure, the using of a false measure, or having in his possession a false measure with intent to use. Sealers of the town where the user resides or has a usual place of business shall at least annually inspect bottles or jars marked and sealed in accordance with this section and shall make a record of such inspections. When once sealed as herein required, such bottles and jars need not again be sealed while in the same condition as when first sealed.

Section 15: Glass bottles or jars for milk or cream; capacity; sealing; designating mark; false measure; revocation of authority

**Section 15.** Glass bottles or jars used for the sale of milk or cream to the consumer shall be of the capacity of one gallon, a multiple of the gallon, or a binary submultiple of the gallon. Dealers in milk or cream using glass bottles or jars for the distribution of milk or cream to consumers, not sealed by the manufacturer, shall bring them into the office of the sealer in their town, to be sealed; but no fee shall be charged or received for sealing them. If a bottle or jar has once been sealed by a sealer or manufacturer, it need not be sealed again while used for the distribution of milk or cream to consumers. Glass bottles or jars sealed hereunder shall be legal measures only for the distribution of milk or cream to consumers. Bottles or jars sealed by

the manufacturer shall be marked with his name, initials, or trade mark, and by any other mark required by the deputy director. The sealing of such bottles or jars by the manufacturer shall not affect any law relating to the giving of false measure or the using, or having in possession, of false measures with intent to use the same. The deputy director, on approval by the director of consumer affairs and business regulation, may revoke the authority given by him to any manufacturer under this section, on proof that the authorized seal or designating mark has been affixed to any bottle or jar not conforming to the respective capacities provided for in this section.

**Section 16: Paper or fiber bottles and jars for milk; capacity; sealing; stamping**

**Section 16.** Paper or fiber bottles and jars used for the distribution of milk or cream to consumers, and holding, when filled to a level with the bottom of the cap or stopple, not less than eight, sixteen, thirty-two, forty-eight or sixty-four ounces, shall be sealed as measures under section forty-one or fifty-one, or by the manufacturer in the manner provided in the preceding section, and when so sealed may be used as provided by law for glass milk jars and bottles. Every such bottle or jar shall have plainly stamped upon it by the manufacturer the words: ""Penalty for re-use, twenty-five dollars."

**Section 17: Re-use of paper or fiber bottles or jars for milk**

**Section 17.** Whoever re-uses any such paper or fiber bottle or jar for distributing milk, cream or other liquid used for food after such bottle or jar has been once used therefor, shall be punished by a fine of not more than twenty-five dollars.

**Section 18: Markings on cans or containers for milk; sealing; rules and regulations; revocation of authority; designating marks; false or insufficient measure; inspection**

**Section 18.** All cans or containers sold for use in the purchase or sale of milk or cream at wholesale shall have their capacity plainly, conspicuously and indelibly marked thereon in terms of liquid quarts. They shall be sealed by the manufacturer thereof, as hereinafter provided, or by a sealer of the town where the user resides or has a usual place of business. The deputy director shall prescribe regulations governing the sealing of such cans or containers by the manufacturer and may authorize such sealing by any manufacturer upon his agreement to conform to said regulations. The deputy director may at any time, for cause, revoke the authority so given by him to any manufacturer. When sealed by the manufacturer, such cans or containers shall be marked with his name, initials or trade mark and with any other designating marks which the deputy director may require. The sealing of such containers by the manufacturer shall not exempt the user from the laws relative to giving a false or insufficient measure, using a false measure, or having the same in possession with intent to use. Sealers of the town where the user resides or has a usual place of business shall at least annually inspect all cans or containers marked and sealed in accordance with this section and shall make a record of such inspections. When once sealed as herein required, a can or container need not again be sealed while in the same condition as when first sealed.

**Section 19: Penalties for violation of sec. 18**

**Section 19.** Whoever, by himself or by his servant or agent, or as the servant or agent of another person, sells any can or container to be used in the purchase or sale of milk or cream at wholesale that is not marked and sealed as required by the preceding section, shall be punished by a fine not exceeding ten dollars for each can or container so sold or shall be subject to a civil citation as provided in section 29A. Whoever, by himself or by his servant or agent, or as the servant or agent of another person, uses any can or container in the purchase or sale of milk or cream at wholesale that is not marked and sealed as

required by the preceding section, shall be punished by a fine not exceeding ten dollars for each offense or shall be subject to a civil citation as provided in section 29A. The deputy director, inspectors and sealers shall enforce the provisions of this and the preceding section.

Section 20: Containers for sale of ice cream; capacity; sealing; designating mark; false or insufficient measure

**Section 20.** All cans, moulds or other containers used in the sale of ice cream or other frozen desserts and/or frozen dessert mix by measure shall be of the capacity of Massachusetts standard liquid measure. Such cans, moulds or other containers shall be sealed, as hereinafter provided, by the manufacturer thereof, or by a sealer, and shall not be legal measures except for ice cream or other frozen desserts and/or frozen dessert mix. When sealed by the manufacturer, such containers shall be marked with his name, initials or trade mark. They may also be marked with any other designating mark assigned to him by the deputy director; provided, that he has agreed to conform to the regulations made by the deputy director relative thereto. When such containers have not been sealed by the manufacturer, they shall be sealed, before they are used, by a sealer, and the dealer who intends to use them shall bring such containers to the office of such sealer for that purpose, but no fee shall be charged for sealing them. The sealing of such containers by the manufacturer shall not be held to exempt the user from the laws relating to the giving of false or insufficient measure, or the using of a false measure, or having in his possession a false measure with intent to use.

Section 21: Semi-annual inspection of ice cream containers

**Section 21.** Sealers shall inspect at least semiannually all cans, moulds or other containers sealed in accordance with the preceding section, and shall make a record of such inspection. If a container has once been sealed as aforesaid, it shall not be necessary to have it sealed again while it is used for the sale of ice cream or other frozen desserts and/or frozen dessert mix as long as it remains in the same condition as when first sealed.

Section 22: Paper or fibre cartons for sale of viscous or semi-solid commodities; capacity; shape; dimensions; markings

**Section 22.** Paper or fibre cartons which are used for the sale by measure of viscous or semi-solid commodities or mixtures of solids and liquids shall contain and shall be sold as containing one gill, one half pint, one pint, one quart, two quarts, one gallon, two and one half gallons, three and one half gallons, and multiples of the gallon, Massachusetts standard liquid measure. Such cartons shall be of such shape and dimensions as may be approved by the deputy director. Whenever the shape and dimensions of any such carton have been so approved, the deputy director may authorize the manufacturer to have printed thereon a statement of its capacity in terms of Massachusetts standard liquid measure and with such other words and marking as the deputy director may require. Such cartons shall be legal measure only for such commodities as may be designated by the deputy director and shall be exempt from the laws requiring the sealing of measures.

Section 23: Testing capacity of containers; seizure; complaint; revocation of authority

**Section 23.** A sealer or deputy of any city or town or the deputy director or an inspector may, if he so desires, and shall, upon complaint, test the capacity of any container which is used or intended to be used as a measure under sections twenty to twenty-four, inclusive; and if the same does not conform to the law,

he shall seize it and enter complaint. The deputy director may, at any time, for due cause, revoke any authority or permit granted by him to any manufacturer under said sections.

#### Section 24: Penalty for unauthorized marking

**Section 24.** Whoever violates any provision of sections twenty to twenty-three, inclusive, and whoever marks a container or other measure, or procures the same to be marked or has printed thereon or procures to have marked or printed thereon, a mark, number or designation without the approval or authority of the deputy director, except as provided in section twenty, shall be punished by a fine of not more than fifty dollars or shall be subject to a civil citation as provided in section 29A.

#### Section 25: Condemnation of weighing or measuring devices; marking; removal of notice

**Section 25.** All weighing or measuring devices which cannot be made to conform to the standard shall be stamped, marked or labelled "Condemned" or "CD" by the sealer. Weighing or measuring devices in possession of a merchant or vendor not used for buying or selling, or for weighing and measuring for hire or reward shall be plainly marked by the sealer with a notice that such articles have not been sealed under this chapter. Whoever removes said notice without the consent of the person affixing the same shall be punished by a fine of not more than fifty dollars or shall be subject to a civil citation as provided in section 29A.

#### Section 26: Use or possession of false or condemned devices

**Section 26.** Whoever uses, or has in possession with intent to use, a false or condemned weighing or measuring device for weighing or measuring any commodity bought, sold or exchanged, or for hire or reward, shall be punished by a fine of not more than fifty dollars or shall be subject to a civil citation as provided in section 29A. The possession of such weighing or measuring device shall be prima facie evidence of intention to use it in violation of law.

#### Section 27: Use of unsealed weighing or measuring devices

**Section 27.** Whoever sells or, if by the custom of trade such weighing or measuring devices are provided by the buyer, buys, by any weighing or measuring device which has not been sealed according to law shall forfeit not more than twenty dollars to the use of the person suing therefor.

#### Section 28: Recovery of market value of goods for use of unsealed devices

**Section 28.** A seller may recover the fair market value of goods, wares or merchandise sold, if they were, for the purpose of the sale, weighed or measured upon weighing or measuring devices not sealed according to law, or weighed or measured by a person not a sworn weigher, measurer or surveyor, or by a person not authorized by law to weigh or measure the same, if such sale is made in good faith and the purchaser is not injured thereby.

#### Section 28A: Sealing and testing of meters for measuring liquefied petroleum gas; tolerances; revocation of authority

**Section 28A.** Meters for measuring liquefied petroleum gas sold in the vapor state and household type liquid petroleum meters shall be sealed by the manufacturer thereof as hereinafter provided or by a sealer

of weights and measures in the town where the meter is used. The deputy director of standards shall prescribe regulations including specifications and tolerances governing the testing and sealing of such meters by the manufacturers and method of determining quantity of liquefied petroleum gas, and other liquid petroleum heating oils, and may authorize any manufacturer to seal such meters upon written agreement to conform to such regulations. The deputy director may at any time for cause revoke the authority so given by him to any manufacturer. The deputy director or his inspectors under his direction shall test and seal or condemn, according to the results of such test, all meters for measuring liquefied petroleum gas sold in the liquid state. For the purposes of this section the term "liquefied petroleum gas" shall mean and include any material which is composed predominantly of any of the following hydrocarbons or mixtures of the same: propane, propylene, butane (normal or isobutane) and butylene; and the term "household type liquid petroleum meters" shall mean positive displacement meters installed between the liquid heating oil storage tank and the oil burner for the purpose of determining the quantity of liquid heating oil consumed.

#### CERTAIN POWERS AND DUTIES OF DIRECTOR OF STANDARDS

##### Section 29. Powers and duties of deputy director of standards

**Section 29.** The deputy director shall enforce the laws relating to the use of weighing and measuring devices and the giving of false or insufficient weight or measure and shall keep a detailed record of his work in connection therewith. He shall also from time to time establish units of measurement to be observed in the sale of wooden shingles in the commonwealth. He may also, if he deems it desirable, and shall, upon request of the manufacturer of any weighing or measuring device or of any sealer of weights and measures, examine such device to determine whether or not its construction is such as to insure reasonably permanent accuracy and whether or not it may be used to facilitate the perpetration of fraud, approving or disapproving it accordingly. The division may also approve weighing and measuring devices for which certificates of conformance have been issued by the National Institute of Standards and Technology under the National Type Evaluation program. When any weighing or measuring device has been so approved or disapproved by him, he shall notify all sealers of weights and measures, who shall thereafter act in accordance with such approval or disapproval when devices of that type are submitted to them for test. All weighing and measuring devices used or intended to be used commercially shall meet all the applicable requirements contained in the most recent publication of National Institute of Standards and Technology Handbook 44 as adopted by the National Conference on Weights and Measures.

The deputy director may from time to time adopt, and may thereafter amend or repeal, and shall enforce, all such reasonable rules and regulations, and orders thereunder, as may be necessary or suitable in relation to weighing and measuring devices, and the use thereof; provided, that such rules and regulations are in accordance with such generally accepted standards of engineering practice as relate to such weighing and measuring devices. Any person aggrieved by any rule or regulation, or order thereunder, made under authority of the preceding sentence may appeal therefrom to the director of consumer affairs and business regulation, who, after due notice, shall hold a hearing thereon and thereafter render a decision upon such appeal; and any person aggrieved by such decision may appeal therefrom to the district court within whose judicial district such person resides or has his usual place of business, and the decision of said court shall be final. Rules and regulations and orders issued by the deputy director hereunder may provide penalties for violations thereof not exceeding, for the first offense, a fine of one hundred dollars and, for the second or subsequent offense, a fine not exceeding five hundred dollars.

There shall be a permanent standing advisory committee comprised of the director of the division of standards or his designee, and a designee from each of the following organizations: the Massachusetts Weights and Measures Association, The Eastern Massachusetts Weights and Measures Association, the western Massachusetts Weights and Measures Association, and the city of Boston's department of

inspectional services. Members of said board shall serve without compensation. Said committee shall be chaired by the director or deputy director of the division of standards. The committee shall develop, and from time to time, revise the certification and continuing education requirements that are established by the division of standards.

The committee shall certify all inspectors, sealers and deputies in accordance with sections 34, 35 and 36 and regulations promulgated by the committee including, but not limited to, regulations covering initial written certification testing for inspectors, sealers and deputies and mandatory continuing education programs for inspectors, sealers and deputies to maintain their certificates. Every store, retail establishment, food store or food department and all merchants within the jurisdiction of the division of standards shall provide adequate space for the display of information relative to how the local sealer or inspector or the division of standards can be contacted as provided in regulations to be promulgated by the committee. Notwithstanding any certification exemption, all sealers, inspectors and deputy sealers and deputy inspectors shall participate in continuing education programs. The committee shall establish a training and education fee to be paid by the municipality which employs such sealer, inspector, deputy sealer and deputy inspector sufficient to offset the cost of providing such training and education.

**Section 29A: Civil citation for violation of weights and measures laws; appeal**

**Section 29A.** As an alternative to initiating criminal proceedings for violations of the following weights and measures laws: section 115A of chapter 6; sections 92B, 96, 98, 174A, 176, 177, sections 181 to 183, inclusive, section 184E, sections 295A to 295K, inclusive, sections 299 and 303F of chapter 94; sections 19, 24, 25, 26, 31, 35, 42, 45, 48, 55, and 56A to 56D, inclusive, of chapter 98, any representative authorized by the director of standards and any person authorized under sections 34, 35 or 36 of this chapter may issue a civil citation for violations of said weights and measures laws in the amount of 75 per cent of the maximum criminal fine provided for said violation, to be paid within 21 days of the date of issuance of such citation.

Any person aggrieved by any citation issued pursuant to this section may appeal said citation by filing a notice of appeal with the director of standards within seven days of the receipt of the citation. Any such appellant shall be granted a hearing before a representative of the director of standards in accordance with chapter 30A. The hearing officer may affirm, vacate or modify the citation. Any person aggrieved by a decision of the hearing officer may file an appeal in the superior court pursuant to the provisions of said chapter 30A.

If a person fails to comply with the requirement set forth in any citation issued pursuant to this section, or shall fail to pay any civil penalty provided thereby within 21 days of the date of issuance of such citation, or within 30 days following the decision of the hearing officer if such citation has been appealed, excluding any time during which judicial review of the hearing officer's decision remains pending, the director of the division of standards may apply for a criminal complaint against such person for the violation, or may initiate a civil action in the district court.

All monies collected by a municipality or local consumer aid groups authorized by the director of standards under said civil citations, less any fee owed to the division of standards for contracted enforcement services pursuant to section 35, shall be retained by such municipality or local consumer aid group authorized by the director of standards, and shall be expended for the purposes of enforcement of item pricing and weights and measures laws. All monies collected by the division of standards under said civil citations shall be credited to the general fund.

Any citation issued by a municipality with a population of over 400,000 is exempt from this appellate procedure. All notices of appeals should be filed with said municipality's appellate board.

Section 31: Use of seals; imitation or counterfeit seals

**Section 31.** The deputy director and town and district sealers shall keep seals for their use. The seal of the deputy director shall bear the letters "C.M." and those of the sealers shall be of a type approved by the deputy director. Any sealer neglecting to keep such a seal shall forfeit not more than twenty dollars, and whoever, without being duly authorized thereto, impersonates a sealer or deputy by the use of a seal or otherwise, or has in his possession an imitation or counterfeit of the seal used by a sealer or deputy shall be punished by a fine of not more than fifty dollars or shall be subject to a civil citation as provided in section 29A.

Section 32. Tests, inspections and adjustments of town standards and devices; complaints; enforcement

**Section 32.** Upon the request of a sealer, and at such other times as the deputy director deems necessary, said deputy director shall cause the standards of apothecaries' weights and apothecaries' liquid measures and the other standard weights, measures and balances of each town to be tested, adjusted and sealed or certified under his direction. He shall also see that such standards are kept in good order and condition, and may at any time, and shall on request of the sealer, cause an inspection of the standards to be made. The deputy director and his inspectors may also inspect any weighing or measuring devices used for buying, selling or exchanging goods, wares, merchandise or other commodity, or for public weighing in a town, and, if found inaccurate, shall forthwith inform the mayor or selectmen, who shall cause the law relating thereto to be enforced. If the deputy director or an inspector discovers a violation of law, he may make and prosecute a complaint and shall have therefor the same statutory powers relative to the enforcement of laws pertaining to weights and measures as are vested in local sealers. Every sealer neglecting to have the standards in his care sealed as provided in this section shall forfeit not more than fifty dollars.

Section 33: Testing of weighing and measuring devices in state institutions; reports; appointment of special deputies

**Section 33.** The deputy director or his inspectors under his direction, shall at least once in each year test all weighing and measuring devices used in checking the receipt or disbursements of supplies in each state institution or department, and shall mark them in accordance with the results of such tests. He shall report in writing his findings to the executive officers of the institution or department; and at their request shall appoint in writing one or more employees, then in the actual service of such institution or department, as special deputies to check the receipt or disbursement of supplies.

Section 33A: Testing of weighing and measuring devices in towns of 5,000 or less inhabitants

**Section 33A.** The deputy director or his inspectors, under his direction, shall at least once in each year test all weighing and measuring devices which are used for the purpose of buying or selling goods, wares or merchandise, for public weighing or for hire or reward, in towns of five thousand or less inhabitants, and shall mark them in accordance with the results of such tests. The number of inhabitants shall mean the population as determined by the last preceding federal census.

## SEALERS OF WEIGHTS AND MEASURES

Section 34: Appointment of sealers and deputies in cities and large towns; powers and duties; interference with sealer; compensation; fees; certification

**Section 34.** Subject to chapter thirty-one, the mayor of each city and the selectmen of each town of over 20,000 inhabitants shall appoint a sealer, and may appoint one or more deputies to act under the direction of the sealer. The sealer and deputies shall enforce the law pertaining to weighing and measuring devices and to the giving of false or insufficient weight or measure, and any person who hinders, obstructs or in any way interferes with a sealer or deputy in the performance of duty shall be punished by a fine of not more than five hundred dollars for the first offense and a fine of not more than one thousand dollars for each subsequent offense. Sealers and deputies appointed hereunder shall receive a salary to be determined by the board, officer or body authorized to determine salaries in their respective cities and towns, and shall also receive an additional allowance for transportation and other necessary expenses. They shall account for and pay into their city or town treasuries monthly all fees received and shall make an annual report to the appointing board or officer, and to the director as provided by section thirty-seven. The sealer and all deputies shall be certified by the committee within one year after assuming their powers and duties. Failure to become certified within one year shall be cause for termination; provided, however, that sealers, inspectors or deputy sealers or deputy inspectors, employed by the division or a municipality upon the effective date of this paragraph, shall become certified within two years. Sealers, inspectors or deputy sealers or deputy inspectors who pass a civil service exam for a position as a sealer, inspector or deputy sealer or deputy inspector of weights and measures, shall be exempt from certification requirements. Notwithstanding any certification exemption, all sealers, inspectors and deputy sealers and deputy inspectors shall participate in continuing education programs. The committee shall establish a training and education fee to be paid by the municipality which employs such sealer, inspector, deputy sealer and deputy inspector sufficient to offset the cost of providing such training and education.

Section 35: Comprehensive weights and measures enforcement system in small towns; certification of sealers and deputies

**Section 35. (a)** The mayor of each city and the selectmen of each town of more than 5,000 and less than 20,000 inhabitants shall establish a comprehensive weights measures enforcement system, subject to annual review by the director, by adopting one of the following three methods:

(1) The mayor of each city and the selectmen of each town of more than 5,000 and less than 20,000 inhabitants may annually appoint a sealer and may appoint one or more deputies to act under his direction. The sealer and all deputies shall be certified by the committee within one year after assuming their powers and duties. Such sealers and deputies shall have the same powers and duties as sealers and deputies appointed under section 34 and shall receive such compensation as may be determined by the selectmen and mayor and an additional allowance for transportation and other necessary expenses. The selectmen and mayor may at any time remove such sealers or deputies and appoint others in their places.

(2) The mayor of each city and the selectmen of each town of more than 5,000 and less than 20,000 inhabitants may contract with the director for the enforcement of the laws pertaining to the sealing of weighing and measuring devices, inspections of item and unit pricing laws and enforcement of other laws relative to weights and measures. The committee shall adopt and shall enforce all such reasonable regulations as may be necessary to establish such contracts. The committee shall set a fee schedule for such enforcement services sufficient to offset the cost of providing such services.



(3) The mayor of each city and the selectmen of each town of more than 5,000 and less than 20,000 inhabitants may combine the whole or part of their territories to establish a weights and measures program as set forth in section 36.

(b) The sealer and all deputies shall be certified by the committee within one year after assuming their powers and duties. Failure to become certified within one year shall be cause for termination. Sealers, inspectors or deputy sealers or deputy inspectors, employed by the division or a municipality upon the effective date of this section, shall become certified within two years; provided, however, that sealers, inspectors or deputy sealers or deputy inspectors who pass a civil service exam for a position as a sealer, inspector or deputy sealer or deputy inspector of weights and measures, shall be exempt from certification requirements. Regardless of any certification exemption, all sealers, inspectors, and deputy sealers and deputy inspectors shall participate in continuing education programs. The committee shall establish a training and education fee to be paid by the municipality which employs each sealer, inspector, deputy sealer and deputy inspector sufficient to offset the cost of providing such training and education.

Section 36: Appointment of district sealers; powers and duties; bond; compensation; records; fees; certification

**Section 36.** Two or more municipalities may combine the whole or any part of their respective territories as may be agreed upon by the boards or officers having the appointing power in such municipalities into a district with one district sealer and one set of standards. He shall have the powers of and perform the duties of sealers under the direction of the director within the district. Each such sealer shall forthwith on his appointment give bond, with sureties approved by the appointing power, for the faithful performance of his duties, for the safety of the standards, working equipment, records, and other things committed to him, and for their surrender to his successor or to any person duly appointed to receive them. He shall be paid a salary determined by the appointing power and shall be provided by them with necessary standards and working equipment, and shall be allowed necessary sums for transportation and other expenses. Each such sealer shall keep a complete record of all his official acts and shall make an annual report to the director as provided by the following section and to each city or town in his district. He shall account for and pay into the treasury of each city or town monthly all fees received by virtue of his office in such city or town. The sealer and all deputies shall be certified by the director within one year after assuming their powers and duties. Failure to become certified within one year shall be cause for termination; provided, however, that sealers, inspectors or deputy sealers or deputy inspectors, employed by the division or a municipality upon the effective date of this section, shall become certified within two years. Sealers, inspectors or deputy sealers or deputy inspectors who pass a civil service exam for a position as a sealer, inspector or deputy sealer or deputy inspector of weights and measures, shall be exempt from certification requirements. Notwithstanding any certification exemption, all sealers, inspectors, deputy sealers and deputy inspectors shall participate in continuing education programs. The committee shall establish a training and education fee to be paid by the municipality which employs each sealer, inspector, deputy sealer and deputy inspector sufficient to offset the cost of providing such training and education.

Section 36A: Determination that cities or towns have an inadequate weights and measures enforcement system; assumption of responsibilities

**Section 36A.** For a city or town where the mayor or board of selectmen have appointed a sealer pursuant to paragraph (1) of subsection (a) of section 35, or for a city or town where the mayor or board of selectmen have appointed a sealer pursuant to section 34, or for a city or town where the mayor or board of selectmen have failed to appoint a sealer, or for municipalities which have combined their territories pursuant to section 36, the director may, upon complaint and after investigation, determine that such city or town has

an inadequate weights and measures enforcement system for the purposes of this section the term inadequate shall be defined as the failure to name a sealer, failure to file an annual report, or gross failure to complete mandatory inspections of weighing and measuring devices and retail scanners. Upon such determination, the director shall send notice to such city or town of the intent of the director to take responsibility for enforcing the weights and measures laws in such city or town. If within 60 days of the notification by the director, such city or town has not improved the weights and measures enforcement system to the satisfaction of the director, the director shall assume responsibility for weights and measures enforcement, including inspectional services, in such city or town and the director may charge such city or town for the cost of said services, until such time as the director determines that an adequate local program is in place.

#### Section 37: Reports of municipalities; weighing and measuring devices

**Section 37.** Each municipality shall annually, between January 1 and January 31, submit to the director a written report that describes the components of the municipality's weights and measures program, including, but not limited to, an inventory of all weighing and measuring devices and equipment and the date of the most recent certification for each device or piece of equipment, inspection results by category, results of tests performed pursuant to section 56D, total citations issued by category, the net loss restored to consumers and merchants as a result of its enforcement program, and any other information required by the director.

A municipality that does not report to the director in the manner prescribed in this section shall not be eligible to retain any revenues generated by the municipality as a result of imposing civil citations as provided in section 29A.

#### Section 38: Duplicate set of apothecaries' weights and liquid measures

**Section 38.** Sealers shall, upon request to the deputy director, be provided, at the expense of their towns, with duplicate sets of apothecaries' weights and apothecaries' liquid measures described in section three, to be used as standards in the towns where they are kept.

#### Section 39: Receipt and accountability of town standards and seal

**Section 39.** Except as otherwise provided in section thirty-six each sealer shall receive from his town treasurer a set of standards and a seal, and shall give a receipt therefor, stating their condition when received; and shall be accountable to such town for the preservation thereof in like condition until returned to the treasurer.

#### Section 40: Duplicate set of weights, measures and balances

**Section 40.** A sealer or deputy visiting the place of business of a person to test and seal weighing or measuring devices may use therefor suitable weights, measures and balances; and each town and district shall furnish its sealer with one or more duplicate sets of weights, measures and balances, which shall at all times be kept to conform to the standards provided by the commonwealth; and all weighing or measuring devices so sealed shall be deemed legally sealed, as if tested and sealed with the standards.

Section 41: Annual testing and sealing of weights and measures; notice; record

**Section 41.** Sealers shall annually give public notice, by advertisement or by posting notices in one or more public places in their towns or districts, to all inhabitants, or persons having usual places of business therein, using weighing or measuring devices for the purpose of buying or selling goods, wares or merchandise, for public weighing or for hire or reward, to bring them in to be tested, adjusted and sealed, excepting that pick clocks on looms in textile factories, required by section one hundred and fifty-six of chapter one hundred and forty-nine, shall be tested on the request of either an employer or an employee, or both, or, in any event, at the discretion of the director of consumer affairs and business regulation or his authorized representatives. Such sealers shall attend in one or more convenient places, and shall adjust, seal or condemn such devices in accordance with the results of their tests, and shall make a record thereof.

Section 42: Failure to comply with notice; sealing on premises; interference with sealer; penalty

**Section 42.** After giving said notice, said sealers shall go to the houses, stores, shops, vehicles, or other commercial premises, during normal business hours, of a person not complying therewith, and shall test and adjust, seal or condemn in accordance with the results of their tests, the weighing and measuring devices of such person; provided, however, that no such person shall use a weighing or measuring device without first having it tested and sealed; provided further, that devices for determining the measurement of leather bought, sold or offered for sale shall be tested at least semiannually; and provided, further, that when a vehicle tank used in the sale of commodities by liquid measure has once been sealed, it shall not be necessary to seal it again while it remains in the same condition as when first sealed. A person who neglects or refuses to exhibit his weighing or measuring device to a sealer or deputy, or who hinders, obstructs or in any way interferes with a sealer or deputy in the performance of duty, or violates any provisions of this section shall be punished by a fine of not more than five hundred dollars for the first offense and a fine of not more than one thousand dollars for each subsequent offense, or shall be subject to a civil citation or order as provided in section 29A.

Section 43: Testing of weighing or measuring devices registering price

**Section 43.** A sealer or deputy shall test all weighing or measuring devices having a device for indicating or registering the price as well as the weight or measure of a commodity offered for sale as to the correctness of both weights or measures and values indicated by them.

Section 44: Testing of devices for determining measurement of leather; rules and regulations

**Section 44.** Devices used for determining the measurement of leather bought, sold or offered for sale shall be tested as to the correctness of measures indicated by them by a sealer of the town where they are used, and the deputy director may make such rules and regulations as he deems necessary to insure the greatest possible accuracy in the use of said devices.

## TAXIMETERS

Section 45: Testing of taximeters; rules and regulations

**Section 45.** All devices used upon vehicles for determining the cost of transportation shall be tested as to the correctness of measures and values indicated by them, and the deputy director may make rules and regulations to insure accuracy in the use thereof. Any owner or operator of a taxicab or other vehicle who

refuses or neglects to comply with any rule or regulation so made by the director shall be punished by a fine of one hundred dollars or shall be subject to a civil citation as provided in section 29A.

**Section 46:** Testing of devices for standardizing production and determining wages, capacity of tanks or containers; sealing; condemnation; fee schedule; certificate; accuracy of automatic devices

**Section 46.** The deputy director may, if he deems it desirable, and shall, upon request, test any weights, measures, instruments or mechanical devices of any kind used or intended to be used in standardizing the production of any manufactured article by controlling processes or by determining the dimensions, proportions or properties of materials or products, in determining wages or compensation for labor performed, in determining the dimensions or capacity of any tank, can or other container, or in determining the accuracy of any automatic weighing or measuring device. When any such weight, measure, instrument or mechanical device has been tested and found correct by the deputy director, he may seal the same. If he finds it inaccurate, he may, in his discretion, either condemn it or he may furnish the owner or user with a certificate indicating the amount and direction of any errors found by him. The deputy director may establish a suitable laboratory fee schedule for the testing of weights, measures, instruments or mechanical devices. This section shall not give to the said deputy director or to his inspectors the power to seal any of the devices which, on April twenty-ninth, nineteen hundred and twenty, were required by law to be sealed by the local sealers throughout the commonwealth.

**Section 46A:** Bulk milk tanks; calibration and sealing

**Section 46A.** Each bulk milk tank shall upon installation be calibrated and sealed by the director or his authorized representative. Reinstallation of a used bulk milk tank shall be considered as an original installation, provided it is for a new owner at other than the original premises. The deputy director shall prescribe rules governing the calibration and sealing of bulk milk tanks. The deputy director shall prepare the required interpolation charts for use in connection with such tanks, utilizing therefor a conversion figure of eight and six-tenths pounds per gallon of milk. A record of the inspection and calibration of all such tanks shall be kept by the deputy director. Whenever the recalibration of a bulk milk tank is requested, it shall be done by the deputy director and the party requesting the recalibration shall pay a fee therefor to be established and collected by the deputy director, but such fee shall not exceed fifteen dollars.

**Section 47:** Annual testing of apothecaries' weights and measures; sealing; graduated glass measures; approval; designating marks; revocation of authority

**Section 47.** Apothecaries and other persons dealing in or dispensing drugs, medicines or merchandise sold, dispensed or given away by apothecaries' weights or by apothecaries' liquid measure, shall, at least annually, cause the weights and measures so used to be tested and sealed by the sealer in the town where they do business; provided, that a graduated glass measure once sealed by a sealer, or by the manufacturer, need not be again sealed while remaining in the same condition as when first sealed. The deputy director shall establish specifications for graduated glass measures. When a representative sample of a graduated glass measure has been submitted to the deputy director and approved by him, as conforming to specifications, he shall assign a designating mark or number to be thereafter permanently affixed to such measures of the particular kind so approved. Graduated glass measures sealed by the manufacturer shall be marked with his name, initials or trade mark and by other marks required by the deputy director. The deputy director may revoke the authority so given to any manufacturer under this section on proof that the authorized seal or designating mark has been affixed to a measure not conforming to the approved sample.

Section 48: Use of untested weights or measures

**Section 48.** Whoever sells or dispenses drugs, medicines or merchandise requiring the use of apothecaries' weights or apothecaries' liquid measures or in the sale of which they are commonly used, and does not have such weights and measures tested under this chapter shall be punished by a fine of not less than five nor more than fifty dollars or shall be subject to a civil citation as provided in section 29A.

Section 49: Annual tests of hay and coal scales

**Section 49.** Sealers shall go once a year, and oftener if necessary, to each hay and coal scale and other weighing or measuring device in their towns not easily or conveniently removed, and shall test, adjust and seal or condemn them.

Section 50: Tests of weighing or measuring devices upon request; results

**Section 50.** Whoever uses any weighing or measuring devices may have them tested by the sealer at any time upon request and the sealer shall seal or condemn the same in accordance with the results of his tests.

Section 51: Sealing of glass milk and cream bottles or jars

**Section 51.** When notified by a dealer in milk or cream using glass bottles or jars for the distribution thereof that he has in his possession not less than six gross of such bottles or jars not sealed, sealers shall forthwith seal them as provided in section fifteen, at a suitable place provided by the dealer.

Section 52: Testing incorrect weights or measuring devices upon complaint; entry; use of device

**Section 52.** If a person informs a sealer that he has reasonable cause to believe, or if such sealer has reasonable cause to believe, that any weighing or measuring device used in the sale of a commodity in his town is incorrect, said sealer shall go where it is and shall test and mark it according to the result of the test; and if it is incorrect and cannot be adjusted, he shall attach thereto a notice of that fact forbidding its use until it conforms to the authorized standard. If a sealer has reasonable cause to believe that any weighing or measuring device has been altered since last adjusted and sealed, he shall enter the premises where it is kept or used and examine it. Whoever uses a weighing or measuring device after refusing permission to a sealer to test it or has in his possession any weighing or measuring device that has been altered for fraudulent purposes since last adjusted and sealed shall be punished by a fine of not less than five hundred nor more than one thousand dollars.

Section 53: Marking devices with stencil; certificate; notice forbidding use; removal of notice

**Section 53.** If a sealer cannot seal any weighing or measuring device in the usual manner, he may mark it with a stencil or by other suitable means, showing that it has been inspected; and if a weighing or measuring device is so small as to render it impracticable to seal it in the usual manner, he shall give a certificate in a form approved by the director, specifying each such weighing or measuring device so tested; but he shall in no case seal or mark as correct weighing or measuring devices not conforming to the standards. If such weighing or measuring device can be readily adjusted by means at hand, he may adjust and seal it; but if not, he shall affix thereto a notice forbidding its use until he is satisfied that it conforms to the standards; and whoever removes said notice without the consent of such officer shall forfeit not more than five hundred dollars, to be equally divided between the town and the complainant.

Section 54: Seizure of weighing or measuring devices for evidence; disposition

**Section 54.** A sealer or deputy may seize without a warrant weighing or measuring devices necessary to be used as evidence in cases of violation of the laws relative to the sealing thereof; and they shall be returned to the owners or forfeited, as the court directs.

Section 55: Seizure of devices not conforming to legal standards; destruction

**Section 55.** A sealer or deputy may seize weighing or measuring devices not conforming to legal standards or not sealed as required by law; and a person having in his possession such weighing or measuring devices, with intent to use them in violation of law, shall be punished by a fine of not more than five hundred dollars or shall be subject to a civil citation as provided in section 29A; and such devices, upon order of a court, shall be destroyed. Possession thereof shall be prima facie evidence of intention to use them in violation of law.

### SEALERS OF WEIGHTS AND MEASURES

Section 56: Fees of sealers

**Section 56.** Except as otherwise established in a town by town meeting action and in a city by city council action, by adoptions of the appropriate by-laws and ordinances to set such fees, sealers shall receive and inspectors may demand the following fees for sealing and inspecting the following weighing or measuring devices:

- (a) Each scale with a weighing capacity of more than ten thousand pounds, twenty-five dollars.
- (b) Each scale with a weighing capacity of five thousand to ten thousand pounds, fifteen dollars.
- (c) Each scale with a weighing capacity of one thousand to five thousand pounds, ten dollars.
- (d) Each scale with a weighing capacity of one hundred to one thousand pounds, five dollars.
- (e) Scales and balances with a weighing capacity of more than ten pounds and less than one hundred pounds, three dollars.
- (f) Scales and balances with a weighing capacity of ten pounds or less, two dollars.
- (g) Each liquid capacity measure, except vehicle tanks, of the capacity of more than one gallon and measures on pumps, fifty cents.
- (h) Each liquid measuring meter, except water meters, the diameter of the inlet pipe of which is one half inch or less, two dollars, more than one half inch but not more than one inch, four dollars; for each such type of liquid measuring meter, the diameter of the inlet pipe of which is more than one inch, the following shall apply, vehicle-tank pump eight dollars, vehicle-tank gravity ten dollars, bulk storage twenty dollars, bulk storage user furnishes certified prover ten dollars.
- (i) Each taximeter or measuring device used upon vehicles to determine the cost of transportation, four dollars.

- (j) Each machine or other mechanical device used for determining linear or area measurement, two dollars.
- (k) Milk bottle or jars, four dollars per gross.
- (l) Vehicle tanks used in the sale of commodities by liquid measures shall be charged for each hundred gallons or fraction thereof, one dollar. An additional fee of two dollars per sealed indicator shall be received.
- (m) All weights and other measures, twenty cents each.
- (n) Each automated electronic retail checkout system with fewer than four cash registers or computer terminals, not more than \$75.
- (o) Each automated electronic retail checkout system with no less than four and no more than 11 cash registers or computer terminals, not more than \$150.
- (p) Each automated electronic retail checkout system with greater than 11 cash registers or computer terminals, not more than \$250.

They shall also receive reasonable compensation for the use of special facilities, necessary repairs, alterations and adjustments made by them.

#### Section 56A: Location of scales for food sold at retail

**Section 56A.** Whoever places a scale or weighing device when used in weighing food sold at retail by weight in the presence of the purchaser so that the weight indicator may not be read and the weighing operations be observed by the purchaser shall be punished by a fine of \$50, or shall be subject to a civil citation as provided in section 29A.

#### Section 56B: Computing scales for prepackaged meat, poultry or fish; penalty for failure to provide

**Section 56B.** Whoever being engaged in the business of selling prepackaged meat, poultry or edible fish at retail refuses or neglects to provide each outlet where said products are sold with a computing scale or refuses to reweigh a prepackaged item of meat, poultry or edible fish in the presence of a prospective purchaser, when so requested, shall be punished by a fine of not less than one hundred dollars or shall be subject to a civil citation as provided in section 29A.

For the purpose of this section, a computing scale shall be deemed one that indicates the money values of a commodity weighed at predetermined unit prices throughout all or part of the weighing range of the scale.

For the purpose of this section, prepackaged meat, poultry, or edible fish shall not include (a) canned meat, poultry or fish; (b) prepackaged cold cuts or other processed meats; or (c) poultry or fish packaged off the premises and labelled with the net quantity of contents.

#### Section 56C: Placement of cash register; observation of total by customer; penalty

**Section 56C.** Whoever maintains a cash register or other mechanical device at a counter for totaling the monetary value of customer purchases at retail which is so hidden or in such a position that the total cannot

be observed by the customer shall be punished by a fine of fifty dollars or shall be subject to a civil citation as provided in section 29A.

#### Section 56D: Examination and testing of automated retail checkout systems

**Section 56D. (a)** The director or the director's inspectors and sealers and inspectors of weights and measures and their deputies shall, in every 24 month period, examine and test the operation of all automated retail checkout systems in all establishments with 3 or more cash registers. Upon complaint to such officials, those officials shall examine and test the operation of any automated retail checkout system to determine whether the price which an item is offered or advertised for sale, including any advertised special price offered to a customer with a store-issued discount or loyalty card, conforms to the unit or net prices displayed to the customer on the visual display and conforms to the price for which a purchaser is charged by the automated retail checkout system to determine whether the total price for items purchased is correctly represented, and may issue notices of violations of this section, under section 29A and this section; provided, however, that nothing in this section shall prohibit the director or the director's inspectors and sealers and inspectors of weights and measures and their deputies from examining and testing any system at any time irrespective of the number of cash registers within the establishment.

(b) If such examination and test reveals that there is evidence of price misrepresentation or information misleading or deceptive to the purchaser of items, or that consumer price scanners, as defined in section 184B of chapter 94, do not meet the operational standards in this subsection, the owner, manager or the designee of the owner or manager of a retail establishment using such automated checkout system shall be punished for the first failed inspection by a civil fine of \$200, for the second failed inspection by a civil fine of \$500 and for any subsequent failed inspection, by a civil fine of \$1,000; provided, however, that there shall be no punishment for any inoperable consumer price scanner that is deployed for reasons other than to obtain an exemption from any law or regulation of the commonwealth requiring the individual price-marking of items offered for sale or for any inoperable consumer price scanner for which a retailer is able to demonstrate to the satisfaction of the inspector that the retailer has communicated in writing with an authorized repair agent, prior to the examination and test, requesting that the inoperable electronic scanner be repaired. For purposes of this section, consumer price scanners shall be deemed fully operational if they operate in the following manner: (1) the consumer price scanner clearly and conspicuously identifies and displays the item by name or other distinguishing characteristics; and (2) the consumer price scanner displays the item's correct price when the item is scanned and, in the case of a retail establishment that uses loyalty cards or otherwise maintains a dual pricing system, the scanner displays both the loyalty card price and the non-card price if they differ. Each consumer price scanner shall display contact information for the division of standards to report broken scanners. Consumer price scanners shall be in compliance with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the architectural access board regulations 521 CMR 1.00. Notwithstanding the method for determining the amount of civil fines under section 29A, a civil citation may be issued for \$200 for each violation, up to a maximum of \$2,500 per inspection. For purposes of this section each item which scans erroneously shall constitute a separate civil violation.

(c) The director shall promulgate and shall enforce regulations based on national industry standards and other criteria necessary to carry out this section.

(d) For the purposes of this section, an automated checkout system shall mean a cash register, computer, terminal, consumer price scanner or other device capable of interpreting the universal product code or any other code which is on an item offered for sale to consumers used to determine the price of the item being purchased, regardless of whether the code entry is accomplished manually or automatically by a machine.



## Section 57: Report

**Section 57.** The director of the office of consumer affairs shall prepare and submit to the governor, the general court and the senate and house committees on post audit and oversight an annual report of the acts of the division of standards. Said report shall include a description of the activities of inspectors of the division of standards and sealers for cities and towns, a description of the components of the weights and measures program, including but not limited to, an inventory of all weighing and measuring devices and equipment held by the division of standards, the most recent date of certification for each device or piece of equipment, total inspection results by category, results of tests performed pursuant to section 56D, total citations issued by category, and the net loss restored to consumers and merchants as a result of its enforcement program.

## CHAPTER 99

### THE METRIC SYSTEM OF WEIGHTS AND MEASURES

#### Section 1: Authorization of metric system; carat weight

**Section 1.** The weights and measures of the metric system may be employed and used in the commonwealth, and no contract or dealing shall be deemed invalid and no pleading in any court shall be open to objection because the weights or measures are stated therein in terms of the metric system; provided, that the carat weight of two hundred milligrams, and its multiples and subdivisions, shall be the sole legal standard for the buying and selling of diamonds and other precious stones. The metric weights and measures received from the United States and now in the custody of the deputy director of standards may be used as authorized standards, and shall in no case be removed from his custody except when necessary for their preservation or repair.

#### Section 2: Tables of weights and measures

**Section 2.** The tables of weights and measures as set forth in the National Bureau of Standards Miscellaneous Publication, issued December 20, 1960, and titled "Units of Weight and Measure, Definitions and Tables of Equivalents", shall be recognized in the construction of contracts and in legal proceedings as establishing in terms of the metric system the equivalents of the other weights and measures expressed therein and may also be used for computing, determining and expressing in customary weights and measures the weights and measures of the metric system.

#### Section 3: Deputy director of standards; town sealers of weights and measures; duties

**Section 3.** The duties of the deputy director of standards and the duties and responsibilities of the sealer of weights and measures of each town, with respect to the keeping, care, verification and use of the standard weights and measures of the metric system, shall be the same as those established by law with respect to other standard weights and measures.

#### Section 4: Verification, adjustment and sealing of metric weights and measures

**Section 4.** The deputy director of standards may verify, adjust and seal all metric weights and measures brought to him for that purpose. The sealer of weights and measures in each town which has received the

standard metric weights and measures shall verify, adjust and seal all metric weights and measures brought to him for that purpose from within the county where such town is situated, and he shall receive a reasonable compensation therefor; but he shall claim no fees for any sealing, verification or adjustment for the performance of which he may otherwise receive compensation by salary paid by the town.

#### Section 5: Duties of persons using metric system; adjustment and sealing; record

**Section 5.** Every person who uses weights or measures of the metric system for the purpose of selling any goods, wares, merchandise or other commodities shall have them adjusted, sealed and recorded by an authorized sealer of weights and measures, and shall thereafter be responsible for the correctness and exactness of the same; and every person who illegally or fraudulently uses the metric weights or measures shall be liable to the same penalty to which he would have been liable if he had used other weights and measures.

### CHAPTER 101

## TRANSIENT VENDORS, HAWKERS AND PEDLERS

#### Section 1: Definitions

**Section 1.** The following words shall for the purposes of this chapter have the following meanings, unless the context requires otherwise:--

"Deputy Director", the deputy director of standards in the office of consumer affairs and business regulation.

"Promoter", a business or person who operates for the purpose of either directly or indirectly, renting, leasing or granting a license to use space to any vendor for the display for sale or for the sale of tangible personal property or services subject to tax under chapter 64H; provided, however, that this shall not include a state or county fair as defined in section 1 of chapter 128A; and provided further, that a promoter licensed under this chapter shall comply with sections 8A and 67A of chapter 62C or any regulations pursuant thereto as required by the commissioner of revenue.

"Tangible personal property", personal property of any nature consisting of any produce, goods, wares, merchandise and commodities whatsoever, brought into, produced, manufactured or being within the commonwealth.

"Temporary or transient business", an exhibition and sale of goods, wares or merchandise which is carried on in a tent, booth, building or other structure unless such place is open for business during usual business hours for a period of at least 12 consecutive months; provided, however, that this shall not include a business operating under a written agreement with a licensed promoter.

"Transient vendor", a person, either principal or agent, who engages in a temporary or transient business in the commonwealth selling goods, wares or merchandise, either in 1 locality or in traveling from place to place; provided, however, that this shall not include a person operating under a written agreement with a licensed promoter.

"Usual business hours", the time period during which similar businesses in the community conduct business.

“Written operating agreement”, a written agreement between a promoter, licensed under section 3A and a vendor to conduct business at any location.

## Section 2: Application of chapter

**Section 2.** The provisions of this chapter relative to transient vendors shall not apply to sales by commercial travelers or by selling agents to dealers in the usual course of business, or to bona fide sales of goods, wares or merchandise by sample for future delivery, or to sales of goods, wares or merchandise by any domestic corporation or agent thereof, by any person, whether principal or agent, who engages in temporary or transient business in any town in which taxes have been assessed upon his stock in trade during the current year, or to hawkers and pedlers as defined in section thirteen, nor shall they affect the right of any town to pass ordinances or by-laws authorized by law relative to transient vendors. No transient vendor shall be relieved or exempted from the provisions and requirements of this chapter relative to transient vendors by reason of associating himself temporarily with any local dealer, trader or merchant, or by conducting such temporary or transient business in connection with or as a part of the business of, or in the name of any local dealer, trader or merchant.

## Section 3: Transient vendors; license; application; special deposit; bond; conditions; fees; rules and regulations; renewals

**Section 3.** Every person before commencing business in the commonwealth as a transient vendor, whether as principal or agent, shall make written application, under oath, for a state license to the deputy director stating the names and residences of the owners or parties in whose interest said business is to be conducted, and shall make a special deposit of five hundred dollars with the deputy director or shall give a bond in the sum of five hundred dollars, payable to the deputy director and his successors, with sureties approved by the deputy director, conditioned upon (1) compliance with the provisions of this chapter relative to transient vendors, (2) payment of all fines or penalties incurred by him through violations of such provisions, and (3) payment or satisfaction of any judgment obtained against him in behalf of any creditor whose claim arises in connection with the business done under the licensee's state license and who, before the expiration of sixty days from the return or surrender of said license or the filing of an affidavit of its loss, shall have given due notice of his claim to the deputy director. Thereupon, upon the payment of a fee, as determined annually by the commissioner of administration under the provision of section three B of chapter seven, the deputy director shall issue to him a state license authorizing him to do business as a transient vendor, subject to such local rules and regulations as may be made in a city by the mayor and city council and in a town by the selectmen. Such license shall expire one year from the date thereof or on the day of its surrender or of the filing of an affidavit of its loss, if it is earlier surrendered or if such affidavit is earlier filed. Such license shall contain a copy of the application therefor and of any statements required under section seven, and shall not be transferable. It shall not authorize more than one person to sell goods, wares or merchandise as a transient vendor either by agent or clerk or in any other way than in his own proper person, but a licensee may have the assistance of one or more persons in conducting his business who may aid him but not act for or without him.

## Section 4: Filing of applications; records; inspection

**Section 4.** The deputy director shall keep on file all applications for such licenses and a record of all licenses issued thereon. All files and records of the deputy director and of the respective town clerks shall be in convenient form and open to public inspection.

Section 5: Local license; application; fee; statement of transient vendor; certificate; endorsement of town clerk

**Section 5.** Every transient vendor, before making any sales of goods, wares or merchandise in a town, shall make application to the aldermen or selectmen or other board authorized to issue such licenses and, unless the fee therefor is fixed as hereinafter provided, shall file with them a true statement, under oath, of the average quantity and value of the stock of goods, wares and merchandise kept or intended to be kept or exposed by him for sale. Said board shall submit such statement to the assessors of the town, who, after such examination and inquiry as they deem necessary, shall determine such average quantity and value, and shall forthwith transmit a certificate thereof to said board. Thereupon the board shall authorize the town clerk, upon the payment by the applicant of a fee equal to the taxes assessable in said town under the last preceding tax levy therein upon an amount of property of the same valuation, to issue to him a license authorizing the sale of such goods, wares and merchandise within the town. The board may, however, authorize the issue of such license without the filing of said statement as aforesaid, upon the payment of a license fee fixed by it. Upon payment of such fee, said town clerk shall thereupon issue such license, which shall remain in force so long as the licensee shall continuously keep and expose for sale in such town such stock of goods, wares or merchandise, but not later than the first day of January following its date. Upon such payment and proof of payment of all other license fees, if any, chargeable upon local sales, such town clerk shall record the state license of such transient vendor in full, shall endorse thereon "local license fees paid" and shall affix thereto his official signature and the date of such endorsement.

Section 6: Neglect or refusal to file statement; false representations

**Section 6.** Any transient vendor who neglects or refuses to file the statement described in the preceding section, if required by the aldermen, selectmen or other like board, or makes a false or fraudulent representation therein, shall be punished by a fine of not less than five nor more than twenty dollars for each day on which he keeps or exposes for sale any goods, wares or merchandise.

Section 6A. Power of attorney in applications for licenses; appointment of deputy director as lawful attorney; service of process

**Section 6A.** Every application under sections three to five, inclusive, for a transient vendor's license shall contain an irrevocable power of attorney, in such form as the deputy director may prescribe, constituting and appointing, in case the license applied for is issued, the deputy director, or his successors in office, the true and lawful attorney of the applicant upon whom may be served all lawful process in any action or proceeding against him growing out of the transaction of business by him within this commonwealth under the license, and containing an agreement that any process against him which is so served shall, if he is notified of such service as hereinafter provided, be of the same legal force and validity as if served on him personally and that the mailing by the deputy director of a copy of such process to him at his last address as appearing on the deputy director's records shall be sufficient notice to him of such service. Service of such process shall be made by leaving duplicate copies thereof with a fee, as determined annually by the commissioner of administration under the provision of section three B of chapter seven, in the hands of the deputy director, or in his office, and the deputy director shall forthwith send one of said copies by mail, postage prepaid; addressed to the defendant at his last address as appearing on the deputy director's records; and an affidavit of the deputy director, or of any person authorized by him to send such copy, that such copy has been so mailed shall be prima facie evidence thereof. One of the duplicates of such process, certified by the deputy director as having been served upon him, shall be sufficient evidence of service upon him under said power of attorney. The court in which the action is

pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action.

Section 7: Advertisement of bankrupt, closing out, administrator's and fire sales; statement of character and reasons for special sale

**Section 7.** No transient vendor shall advertise, represent or hold forth any sale as an insurance, bankrupt, insolvent, assignee's, trustee's, executor's, administrator's, receiver's, wholesale, manufacturers' wholesale or closing out sale, or as a sale of any goods damaged by smoke, fire, water or otherwise or in any similar form, without first making a sworn statement to the deputy director, either in the original application for a state license or in a supplementary application, of all the facts relating to the reasons for and character of such special sale so advertised or represented, and of the names of the persons from whom the goods, wares or merchandise were obtained, the date of delivery to the person applying for or holding the license, the place from which said goods, wares or merchandise were last taken, and all details necessary to exactly locate and fully identify all such goods, wares or merchandise.

Section 8: Selling without license; false statements in license application

**Section 8.** No transient vendor shall sell or expose for sale, at public or private sale, any goods, wares or merchandise without state and local licenses therefor, properly endorsed, nor shall any person, either principal or agent, advertise by circular, handbill, newspaper or in any other manner any such unlicensed sales. No transient vendor shall file any application, original or supplementary, containing any false statement.

Section 9: Penalty for violation of section 7 or 8

**Section 9.** Violations of section seven or eight shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than two months, or both.

Section 10: Action for recovery of local license fee

**Section 10.** If a person liable for the license fee required by section five refuses or neglects to pay the same after demand by the clerk of the town in which he intends to sell goods, wares and merchandise, the clerk may maintain an action of contract therefor in his own name for the benefit of such town.

Section 11: Return or surrender of state license; cancellation; affidavit of loss; notice

**Section 11.** Upon the expiration and return, or surrender before expiration, of each state license, the deputy director shall cancel the same, endorse the date of return or surrender thereon, and place the same on file. If a license is lost he may accept in lieu of the return or surrender thereof an affidavit to that effect, which shall be so endorsed and filed. He shall hold the special deposit of the licensee for sixty days after the return or surrender of the license or the filing of such affidavit and, after satisfying or making provision in accordance with the following section for all claims made upon the same under said section, shall return the surplus, if any, to said licensee; or, if said licensee has given a bond in lieu of said deposit, the deputy director shall, after said sixty days and after all claims made under the following section have been satisfied or settled, cancel said bond and notify said licensee and the surety on said bond.

## Section 12: Attachment of special deposit; execution; notice of claim; payment of fines and penalties

**Section 12.** Each deposit made with the deputy director shall, during the term of the licensee's license and for sixty days after the return or surrender thereof or the filing of an affidavit of its loss, be subject to attachment and execution in behalf of any creditor of the licensee whose claim arises in connection with the business done under his state license and who gives notice of such claim to the deputy director during such period, and the deputy director may be held to answer as trustee, under the trustee process, in any civil action in contract or tort brought against said licensee for such claim and shall pay over upon execution such amount of money as he may be chargeable with upon his answer. Said deposit shall also be subject to the payment of any fine or penalty imposed on the licensee for violation of any provision of the eleven preceding sections; provided, that written notice of the name of said licensee and of the amount of such fine or penalty is given during such period to the deputy director by the clerk of the court in which, or the trial justice by whom, such fine or penalty was imposed. No payment of any part of said deposit shall be made to the licensee unless so much thereof is retained as is required to discharge all claims, fines and penalties of which notices have been given to the deputy director as herein provided and which remain undecided or unpaid. Upon the giving of notice as herein provided, a bond given in lieu of such deposit may be put in suit by any such creditor to recover the amount of such claim or by any such clerk of court or trial justice to recover the amount of such fine or penalty. If the licensee has made a deposit, the deputy director shall, until said deposit is exhausted, pay or make provision for the payment of all such claims, fines and penalties in the order in which notices thereof were received by him. If the licensee has given a bond, the order in which persons entitled to all such claims, fines and penalties shall recover on the bond shall, until the penal sum of the bond is exhausted, be determined by the order in which notices thereof were received by the deputy director.

## Section 12A: Special licenses relating to transient sales for charitable purposes

**Section 12A.** The selectmen in a town or in a city such board or officer as may be designated by ordinance, may, under such conditions as they may deem proper, grant to any organization engaged in charitable work or to a post of any incorporated organization of veterans who served in the military or naval service of the United States in time of war or insurrection a special license authorizing it, for a particular time period not to exceed a total of four days to be stated in such license, and for a charitable purpose stated in such license, to conduct under their control a temporary or transient business in which transient vendors participating in such sales shall not be subject to the provisions of sections three to twelve, inclusive. Cities and towns may regulate such sales by ordinance, by-law or by local rules and regulations as may be made in a city by the mayor and city council and in a town by the selectmen. The exercise of the licenses hereby provided for shall be subject to the provisions of all statutes, ordinances, by-laws, rules and regulations not inconsistent herewith.

## HAWKERS AND PEDLERS

### Section 13: Definitions

**Section 13.** Except as hereinafter expressly provided, the terms "hawker" and "pedler" as used in this chapter shall mean and include any person, either principal or agent, who goes from town to town or from place to place in the same town selling or bartering, or carrying for sale or barter or exposing therefor, any goods, wares or merchandise, either on foot, on or from any animal or vehicle.

#### Section 14: Unauthorized sales

**Section 14.** A hawker or pedler who sells or barter or carries for sale or barter or exposes therefor any goods, wares or merchandise, except as permitted by this chapter, shall forfeit not more than two hundred dollars, to be equally divided between the commonwealth and the town in which the offence was committed.

#### Section 15: Application of chapter

**Section 15.** The provisions of this chapter relating to hawkers and peddlers shall not apply to wholesalers or jobbers selling to dealers only, nor to commercial agents or other persons selling by sample, lists, catalogues or otherwise for future delivery, nor to any dealer regularly engaged in supplying customers with fuel oil for heating or cooking purposes from a fixed place of business within the commonwealth and who does not customarily solicit direct sales from house to house or by means of outcry, sign or signal, nor to any person who peddles only fish obtained by his own labor or that of his family, fruits, vegetables or other farm products raised or produced by himself or his family, nor to persons selling articles for charitable purposes under section thirty-three, nor to persons licensed under section forty of chapter ninety-four with respect to the sale by them of eggs, or milk, skimmed milk, cream, butter, cheese or other milk products, except frozen desserts as defined in section sixty-five G of said chapter ninety-four.

#### Section 16: Sale of certain articles; temporary licenses

**Section 16.** The sale by hawkers or peddlers of jewelry, furs, wines or spirituous liquors, small artificial flowers or miniature flags is prohibited. This prohibition shall not apply to costume jewelry, so called, with a dollar value of not more than ten dollars per piece made by a nonprofit or charitable organization. Nothing in this section shall be construed to prevent the granting of temporary licenses under section thirty-three for the sale of small artificial flowers or miniature flags. For the purposes of this section, a "small artificial flower" shall mean any artificial flower the blossom or body of which does not exceed two and one quarter inches in any dimension.

#### Section 16A: Sale of frozen desserts on or from motor vehicle; flashing lights required

**Section 16A.** Any hawker or peddler who sells frozen desserts, as defined in section sixty-five G of chapter ninety-four, on or from a motor vehicle, shall equip such vehicle with a flashing amber dome light and front and rear warning lights which shall flash alternately and which shall be kept flashing when such vehicle is stopped for the purpose of selling frozen desserts.

#### Section 17: Sale of certain articles without license

**Section 17.** Hawkers and peddlers may sell without a license newspapers, religious publications, ice, flowering plants and such flowers, fruits, nuts and berries as may be wild or uncultivated. The aldermen or selectmen, may by regulations not inconsistent with this chapter, regulate the sale or barter and the carrying for sale or barter or exposing therefor by hawkers and peddlers of such articles without the payment of a fee may, in like manner require hawkers and peddlers, whether adults or minors, to be licensed except as otherwise provided and may promulgate regulations governing the same provided, however, that the license fee shall not exceed that prescribed by section 22. Such regulations may, in like manner, affix penalties for violations of such regulations not to exceed the sum of \$20 for each such violation. A hawker and peddler licensed under this section shall not be required to be licensed under said section 22.

## Section 18. Sale without license

**Section 18.** Articles other than those the sale of which is licensed, or permitted without a license, under the preceding section, and not prohibited by section sixteen, shall not be sold by hawkers or pedlers unless duly licensed as hereinafter provided.

## Section 18A: Food for sale for consumption by infants; drugs

**Section 18A.** Food manufactured and packaged for sale for consumption by a child under the age of two years, or a drug as defined in section one of chapter ninety-four shall not be offered for sale or sold at a flea market, so-called.

Any person violating the provisions of this section shall be punished by a fine of not more than one hundred dollars for each item so offered for sale or sold.

## Section 19: Trade or sale of bootblacking by minors; permits

**Section 19.** The aldermen or selectmen may make regulations consistent with the general laws relative to the exercise of the trade of bootblacking by minors, and to the sale or barter by minors of any goods, wares or merchandise the sale of which is permitted without a license by section seventeen, and may prohibit such trade or such sales, or may require a minor to obtain from them a permit therefor to be issued on terms and conditions prescribed in such regulations; provided, that in the case of girls under the age of eighteen years and of boys under the age of sixteen years the foregoing powers in cities shall be vested in and exercised by the school committee. No permit issued to a minor under this section nor badge issued to him under sections sixty-nine to seventy-three, inclusive, of chapter one hundred and forty-nine shall authorize the sale by a minor of any article, other than those which may be sold without a license under section seventeen, except that a badge so issued may authorize, in addition, the sale of magazines and other periodicals and song sheets, so called. A minor who sells such article or exercises such trade without a permit, if one is required, or who violates the conditions of his permit or any provision of said regulations, shall be punished by a fine of not more than ten dollars.

## Section 20: Permitting or aiding minor to violate section 19 or 34

**Section 20.** No person, having a minor under his control, shall knowingly permit such minor to violate any provision of section nineteen or any provision of section thirty-four, nor shall any person procure or employ a minor to commit any such violation, nor shall any person, either for himself or as agent of any other person, furnish or sell to a minor any article the sale of which is permitted without a license by section seventeen, with knowledge that such minor would be selling such article in violation of section nineteen or in violation of section thirty-four, or after having received written notice to that effect from the school committee or any other officer charged with the enforcement of said section nineteen or said section thirty-four. Violation of this section shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months.

## Section 21: Employing or permitting minor to engage in hawking or peddling without permit or license

**Section 21.** Whoever employs a minor in, or, having the care or custody of a minor, permits such minor to engage in, hawking or peddling without a permit or license, if one is required, or permits him to engage in



selling door-to-door for future delivery without a certificate pursuant to section thirty-four, or for himself or as agent of any other person, furnishes or sells to a minor any article with knowledge that the minor would be selling such article in violation of the provisions of this chapter relative to hawkers and peddlers or in violation of the provisions of this chapter relative to those who sell door-to-door, shall be punished by a fine of not more than five hundred dollars, to be equally divided between the commonwealth and the town in which the offense was committed, or by imprisonment for not more than six months.

Section 22: License; certificate of police chief; fees; special state licenses; rules and regulations

**Section 22.** The deputy director may grant a license to go about carrying for sale or barter, exposing therefor and selling or bartering any goods, wares or merchandise, the sale of which is not prohibited by section 16, to a person who is or has declared an intention to become a citizen of the United States and who files with the deputy director a completely executed application to be furnished by the deputy director and on which shall be a certificate which shall be signed by the chief of police of the city or town in which the applicant resides which shall state that to the best of his knowledge and belief the applicant therein named is of good repute as to morals and integrity. The deputy director may grant, as aforesaid, special licenses upon payment by the applicant to the deputy director of a fee, as determined annually by the commissioner of administration under the provision of section 3B of chapter 7 and the licensee may go about carrying for sale or barter, exposing therefor and selling or bartering in any city or town any meats, butter, cheese, fish, fruits, vegetables or other goods, wares or merchandise, the sale of which is not prohibited by statute. A hawker or peddler licensed under this section shall not be required to be licensed under section 17. A hawker or peddler licensed under this section shall be subject to such local rules and regulations as may be made in a city by the mayor and city council and in a town by the board of selectmen.

Section 22A: License for sale of prepared food; requisites

**Section 22A.** No license shall be issued pursuant to section twenty-two to a person for the business of selling or exposing for sale from a mobile vending or peddling vehicle prepared food, meals or lunches intended to be consumed by the purchaser without further preparation or processing thereof by the purchaser, unless a certificate of registration as required by section three hundred and five C of chapter ninety-four has been issued for the premises or place of business at which such food, meals or lunches are prepared, handled or processed. The location of said premises or place of business and the fact that they have been so registered shall be endorsed upon the license issued under said section twenty-two.

**Section 23: Repealed, 1961, 293, Sec. 2**

Section 24: Special licenses to veterans and blind persons; authority to sell on public streets

**Section 24.** The deputy director may grant without fee, on proof of identity, a special state license to act as hawker or peddler, subject otherwise to this chapter, to a World War I or II or Korean or Vietnam veteran, as defined in clause Forty-third of section seven of chapter four, who has a service-connected disability as recognized by the United States government; and to any blind person resident in the commonwealth and approved by the commissioner of the blind; provided, that no license under this section shall authorize the holder thereof to act as hawker or peddler on any public street or sidewalk in any city or town unless and until he shall have received written authority so to do from the chief of police or other official having charge of the police therein.

**Section 25: Repealed, 1970, 775**

## Section 26: Record of licenses; inspection

**Section 26.** The deputy director shall keep a record of all licenses to hawkers and peddlers granted by him, including the number of each such license and the name and residence of the licensee. All such records shall be open to public inspection. All such licenses shall bear the date of their issue and shall continue in force for one year from that date.

## Section 27: Endorsement, display, and production of license; penalties

**Section 27.** Every person licensed as a hawker or pedler shall endorse his usual signature upon his license. The deputy director shall, at the expense of the licensee, provide a means for displaying such license which must be worn in a visible and conspicuous manner on his outer clothing with the license number, licensee's name and the date of expiration exposed to view. Each licensee shall produce his license for inspection whenever demanded by the deputy director or by a mayor, alderman, selectman, inspector of standards, sealer or deputy sealer of weights and measures, city or town treasurer or clerk, constable, police officer or justice of the peace; and if he fails so to do, or fails to wear his license in a visible and conspicuous manner as heretofore prescribed, he shall be subject to the same penalty as if he had no license.

## Section 28: Effect of license on prosecution

**Section 28.** No license issued to a hawker or pedler shall defeat or bar a prosecution against the licensee, if it is proved that he sold or bartered, carried for sale or barter or exposed therefor, any articles, except such as are permitted without a license by section seventeen, in a place in which he was not licensed to sell.

## Section 29: Sales by hawkers or pedlers licensed as auctioneers

**Section 29.** No hawker or pedler, holding an auctioneer's license, shall sell or expose for sale by public auction any goods, wares or merchandise in any town other than that from whose authorities such license was obtained, nor in any place in such town not expressly described therein.

## Section 30: Revocation of licenses

**Section 30.** Any license granted by the deputy director under this chapter may be revoked by him upon conviction of the licensee of any crime which in the judgment of the deputy director warrants such revocation, or upon the submission to the deputy director of evidence satisfactory to him that, during the term of the license, the licensee has accepted or solicited money otherwise than through the bona fide sale or barter of goods, wares or merchandise or has violated any provision of section ten A of chapter two hundred and sixty-four, or has in any manner begged or solicited alms from the public, or for any other sufficient cause. Whenever any person is convicted of a violation of any provision of this chapter, or a person holding such a license is convicted of any crime, the clerk of the court in which, or the trial justice by whom, such person was convicted shall notify the deputy director.

## Section 31: Counterfeiting or forging licenses

**Section 31.** Whoever counterfeits or forges a license, or a certificate of registration issued pursuant to section thirty-four, or has a counterfeited or forged license or certificate in his possession with intent to utter or use the same as true, knowing it to be false or counterfeit, or attempts to sell under a license or certificate which has expired or has been revoked or cancelled, or which has not been issued or transferred

to him, or has in his possession another's license or certificate with intent to use the same, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months, or both such fine and imprisonment.

Section 32: Arrest of hawkers, peddlers and door-to-door salespersons; prosecution

**Section 32.** The deputy director, inspectors of standards and, within their respective jurisdictions, sealers or deputy sealers of weights and measures, constables and police officers shall arrest and prosecute every hawker and peddler, and transient vendor, who they may have reason to believe is violating any provision of this chapter. The chief of police, a police officer, or other official designated by a city council of a city or a board of selectmen of a town, may arrest and prosecute a person who engages in the sale of goods door-to-door for future delivery who such official has reason to believe is violating the provisions of section thirty-four.

Section 33: Temporary licenses to sell articles for charitable purposes; fees

**Section 33.** The selectmen in a town or in a city such board or officer as may be designated by ordinance may, under such conditions as they may deem proper, grant to any organization engaged exclusively in charitable work, or to a post of any incorporated organization of veterans who served in the military or naval service of the United States in time of war or insurrection, a special license authorizing it, upon a particular day and for a charitable purpose named in such license, to sell, through its accredited agents in the streets and other public places within such city or town, or in any designated part thereof, flags, badges, medals, buttons, flowers, souvenirs, and similar small articles; provided, that no person under sixteen years of age shall be accredited as such agent, that each agent shall wear in plain sight while engaged in selling such articles a badge, provided by such organization or post and approved by the authority issuing the license, bearing upon it the name of such organization or post and the date on which the license is to be exercised, and that no such agent shall be authorized to make or attempt to make such sales in front of any private premises against the objection of the owner or occupant thereof. The exercise of the licenses hereby provided for shall be subject to the provisions of all statutes, ordinances, by-laws, rules and regulations not inconsistent herewith. The fee for such a license shall be established in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances to set such fees, but in no event shall any such fee be greater than ten dollars.

#### DOOR TO DOOR SALES

Section 34: Door-to-door sales for future delivery; employment of minors; duties of sales organization; registration

**Section 34.** (a) As used in this section the following terms shall have the following meanings:--

"Sales agent", a person under eighteen years of age who is recruited or retained by, or who represents, or is in any manner associated with, whether as an employee or an independent contractor, any sales organization engaged in the sale of goods or periodicals door-to-door for future delivery for any commercial purpose in a city or town in the commonwealth. The term "sales agent" shall not include: (i) a person engaged in activities under the immediate supervision of a parent or guardian, or (ii) a person who does not earn his primary source of income while performing services for a sales organization, or (iii) a person who does not reside away from his home while engaged in the sales activity.

"Sales organization", a person or representative thereof, engaged in the supervision, recruitment, retention, or employment of sales agents for the door-to-door sale of goods or periodicals for future delivery.

"Sales group", any group of persons, including sales agents, which is engaged in the door-to-door sale of goods or periodicals for future delivery and which is under the supervision of a sales organization or sales supervisor.

"Sales supervisor", a person representing a sales organization who directs or supervises a sales group in any city or town in which it is engaged in the sale of goods or periodicals door-to-door for future delivery.

(b) No sales organization shall recruit, hire, or employ a person to engage in the sale of goods or periodicals door-to-door for future delivery unless and until such person furnishes the sales organization with information sufficient to inform such sales organization of such person's age and identification.

Each sales organization shall:

(1) prior to the employment of a person under eighteen years of age, furnish to a parent or guardian of such person a listing of cities or towns in which the sales group will be working in the two weeks immediately following such employment, the dates when the sales group shall be in each such city or town, the address of the sales group in each such city or town during the time the sales group is in such city or town, and the business address at which such parent or guardian may be informed of such person's work address.

(2) keep accurate accounts of sales made, lawful expenses incurred, and all amounts earned by each sales agent.

(3) provide to each sales agent for each pay period, but not less than once each seven days, an itemized written statement of the account of such sales agent.

(4) pay, on the same day each pay period to each sales agent, all money earned from all sales made a week or more prior thereto by such sales agent.

No sales organization, in carrying out any contract, agreement, or other arrangement with any sales agent, shall engage in any of the following conduct or activity:

(1) threats or acts of reprisals, intimidation, or physical violence against any sales agent, or any person acting on behalf of any sales agent.

(2) refusal to disburse commissions, salary, compensation, or other remuneration owing to a sales agent.

(c) All sales agents and sales supervisors covered by the provisions of this section shall register with a chief of police or with another official to be designated by the city council of a city or the board of selectmen of a town of initial registration. Each applicant for registration shall provide positive identification, give a permanent street address, provide an exemplar of his signature, the name of his employer or the party responsible for complying with the provisions of subsection (b), the business address of such employer, the identity and registration of any motor vehicle to be used to transport goods or persons engaged in said business, and a brief description of the goods to be sold and proposed method of operation. Said chief of police or designated official shall photograph each applicant for the purpose of identification and shall retain a copy of each such photograph for a minimum of two years.

Each registrant shall pay to the city or town in which the initial registration occurs a registration fee in accordance with the provisions of section twenty-two.

If the chief of police or designated official determines by investigation or receives reliable information that an applicant has been convicted of a felony or is a fugitive from justice or if such applicant refuses to provide any of the required information, then said applicant may be denied registration. Otherwise, said chief of police or designated official shall provide each successful applicant who pays the required fee a certificate of registration which shall be effective and valid for two years from the date of issuance. Each such certificate of registration shall include the applicant's photograph, the applicant's description and signature, as well as the date and the name of the city or town of issuance. The certificate of registration shall be issued within forty-eight hours of the submission of the application. Such certificate shall be conspicuously displayed by each registered sales agent and sales supervisor when engaged in selling.

Before a sales agent or sales group may commence selling goods or periodicals door-to-door for future delivery in a city or town, written notice shall be given to the chief of police or other official designated by the city council of such city or the board of selectmen of such town. Such written notification shall include the name and local address of each sales agent and sales supervisor, the date and time in which the sale is to be conducted, a description of the goods or periodicals to be sold, and the proposed method of operation.

The chief of police or other designated official of a city or town shall electronically notify the criminal history systems board of the name of each sales agent, including a sales agent within a sales group, and each sales supervisor who has registered or provided notice that he is selling goods or periodicals door-to-door for future delivery in said city or town. Said notification shall be by means of the criminal justice information system in accordance with a plan to be developed by the criminal history systems board. The chief of police shall make inquiry to determine whether a sales agent or sales supervisor is a missing person.

The chief of police or other designated official may regulate the hours during which and conditions under which the registrant may engage in door-to-door selling. If the sales group intends to extend its stay in any city or town, the sales supervisor, or sales organization if there is no sales supervisor, shall submit to the chief of police or other designated person a written statement citing the reason for such extension and the date of the expected departure of such sales group.

Any such registration may be revoked for good cause by the chief of police or other designated official in any city or town in which such sales are being made. Good cause shall include a violation of this section or a determination that the registrant has been convicted of a felony, or is a fugitive from justice, or has been charged with a felony while engaged as a sales agent or sales supervisor. In the event of any such revocation, the chief of police or other designated official shall immediately notify in writing the chief of police of the city or town which issued the certificate of registration so revoked.

(d) A person or sales organization that knowingly violates any provision of this section shall be subject to a fine of five hundred dollars or imprisonment for not more than six months.

A person who knowingly supplies false information on an application or who carries on the business regulated by this section without registering or after his registration is revoked or expired shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months.

(e) The provisions of this section shall not apply to any person who goes door-to-door to sell goods or periodicals on behalf of any group organized for any political purpose or for any purpose described in section four of chapter one hundred and eighty, nor shall this section apply to a person engaged in any sale governed by section sixty-nine of chapter one hundred and forty-nine.

# APPENDIX 1

## Motor Fuel Regulations 202 CMR 2.00

### DIVISION OF STANDARDS

#### 202 CMR 2.00: MASSACHUSETTS STANDARDS

##### Section

2.06: Advertising and Sale of Motor Fuel and Lubricating Oil at Retail

2.10: Minimum Standards of Strength and Quality for Anti-freeze

2.11: Standards for the Various Grades of Heating Oils Requiring Manufacturers or Distributors To Furnish Samples of the Same, and providing for the Entry and Inspection of the Premises of Such Manufacturers or Distributors, and the Inspection of Heating Oils Stored Thereon

2.06: Advertising and Sale of Motor Fuel and Lubricating Oil at Retail

(1) The Display of Price Advertising Signs. Each pump or other dispensing device, including computing pumps, from which motor fuel is sold at retail shall have attached or affixed atop the dispenser at least one sign and not more than two signs of weatherproof material in a plain and conspicuous position showing the price per gallon of motor fuel sold there-from. Each face of said sign shall be deemed one sign. In addition, if a discount is offered for cash sales the words

"cash" shall be included in the applicable portion of the sign and directly above the "cash" price.

When "cash" sales and other types of sales are made from the same dispenser both prices shall be posted in a dual price sign and labeled directly above that price with the type of sale the price refers. i.e. "cash", "credit", "credit/debit" or the condition of sale required for the non-cash price posted in print no smaller than two inches in height.

- a. The price(s) shown shall be the unit price per gallon, which price(s) shall include all taxes imposed, both federal and state. Beneath said unit price there shall appear either of the following statements: "All taxes included"; "Including tax"; or "tax inc". All letters appearing on the sign(s) regarding this statement shall be at least 1/4 inch high.
- b. Each and all of the letters, figures or numerals of such sign shall be plainly legible, shall be of the same type and design, and shall be black lettering and figures imposed on a white background or white lettering and figures imposed on a black background.
- c. All figures or numerals on each sign shall be at least four inches high and all lines or marks used in the making of such figures or numerals shall be at least 1/8 inch in width and the over-all height of any figure or numeral, except the figure one, shall not be greater than three times the over-all width of such figure or numeral. Minimum size of the sign including the frame must be no less than eight inches in height and ten inches in length.
- d. If a fraction of a cent is a part of the price per gallon and it is expressed as a common fraction with numerator and denominator, the total height of such fraction shall be equal to that of a whole number used on such sign, and the numerator and denominator shall be of equal sizes in relation to each other. If dollar and decimal places are used to indicate the price per gallon all numerals shall be of the same size.

Said sign or signs shall be placed in a plain and conspicuous position so as to be easily visible from any position a customer may reasonably be expected to assume. If service of motor fuel may be made from more than one side of such dispensing device, signs shall be placed so as to be visible from at least two sides of such device.

(2) The Display of Price Advertising Signs Applicable to Multi Grade Dispensers and Blending

Dispensers Only. In addition to the foregoing, the following shall apply to multi grade and blending dispensers only. Each multi grade and blending dispenser shall display individual unit price designations for all grades, blends or mixtures sold through the delivery outlet, which shall be placed in line with the unit price pump indications and the pump grade dispenser selectors on the dispenser(s). In addition, price signs displayed on multi grade and blend dispensers dispensing more than three grades or blends shall plainly and conspicuously identify the grade, blend or mixture in letters a minimum of two inches in height. Further, the grade(s) of fuel advertised and posted on the dispenser(s) for the lowest and highest octane fuel shall be the grade of fuel for the lowest octane and highest octane fuels being dispensed as indicated on the wholesale delivery invoice.

(3) Street Signs and Non Dispenser Display Advertising of Prices. Any sign other than those required to be posted on the dispenser(s) referring to the price of fuel shall be the total price including all taxes, shall state the grade to which the price refers and if a condition of sale is required to receive the price

advertised, then the condition of sale must be clearly stated on the sign in close proximity to the price in print size no smaller than 1/3rd the size of the advertised price. If the same grade of fuel is advertised at more than one price than the same name for that grade of fuel and no other must be used. If the word unleaded is used in the advertisement the grade of fuel to which the price refers must also be stated in the advertisement next to the word unleaded.

(4) Records to be kept.

- a. A Sales Record which shall show the total quantity of each grade of motor fuel and lubricating oil sold each day. Supporting records of meter readings must be kept for each dispenser.
- b. A Purchase Record shall show the total quantity of each grade of motor fuel and the total quantity of lubricating oil purchased. Documentary evidence must be kept, such as invoices, delivery tickets, or monthly statements on the purchases of motor fuel and of lubricating oil.

(5) Marking by Brands.

- a. All above-ground equipment for storing or dispensing motor fuel or lubricating oil operated by a retail dealer shall bear in a conspicuous place the brand name or trade mark of the product stored therein or sold or dispensed therefrom. If such motor fuel or lubricating oil has no brand name or trade mark, the container or dispensing equipment must be plainly and conspicuously marked with the words "No Brand."
- b. When lubricating oil is dispensed from glass bottles or jars contained in a rack or carrier, it will be sufficient to mark such carrier or rack plainly or conspicuously with the brand name or trade mark of the manufacturer of the product. If there is no brand name or trade mark, such carrier or rack shall be plainly and conspicuously marked "No Brand."  
No glass bottles or jars, other than as indicated by the markings on the carrier or rack, shall be commingled with or placed in such carriers or racks.
- c. When lubricating oil is dispensed from hand measures, such measures need not be marked, provided they are filled in the presence of the customer from a container or dispenser which is marked as hereinbefore required.
- d. The above marking shall be readily visible to and readable from any position a customer may reasonably be expected to assume.
- e. Delivery fill boxes of motor fuel tanks shall be plainly marked as to the grade of motor fuel contained therein.

(6) Display of Alcohol Content Signs. The main display panels of each pump or other dispensing device, including computing pumps, from which motor fuel, blended or mixed with more than one percent alcohol is sold at retail, shall have affixed thereon, one sign made of waterproof material showing the ethanol, methanol and cosolvent content of the motor fuel. Such sign shall look like the illustration appearing at the end of 202 CMR 2.06.

- a. Such signs shall be as follows:
  - (1) Layout. The signs shall be five inches wide by six inches long with a □ black border.
  - (2) Type Size. Block letters and numerals shall be used on the signs. The words "ALCOHOL CONTENT" shall be in letters ½" high and 1/8" wide. All other letters and numerals shall be at least ¼" high and 1/8" wide.
  - (3) Colors. Such signs shall be in black print on a yellow background. Both colors shall be non-fade.
- b. For the purpose of 202 CMR 2.06(5):  
Co-Solvent means an alcohol or any other chemical with higher molecular weight than ethanol or methanol which is blended or mixed with either or both to prevent phase separation in gasoline.



Ethanol means ethyl alcohol, a flammable liquid having the formula  $C_2H_5OH$ , blended or mixed with gasoline for use in motor vehicles and commonly or commercially sold as ethanol or ethyl alcohol.

Methanol means methyl alcohol, a flammable liquid having the formula  $CH_3OH$ , blended or mixed with gasoline for use in motor vehicles and commonly or commercially known or sold as methanol or methyl alcohol.

ALCOHOL CONTENT	
MAX. % BY VOLUME	
ETHANOL	_____ %
METHANOL	_____ %
ALCOHOL COSOLVENT	_____ %

(7) Biodiesel/Biomass and Biodiesel/Biomass Blends Pump Labeling Requirements

(a) Biodiesel means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet:

(1) the registration requirements for fuels and additives under 40 CFR part 79; and

(2) the requirements of the American Society for Testing and Materials standard D6751 "Standard Specification for Biodiesel Blend Stock (B100 for Middle Distillate Fuels).

(b) Biomass-based diesel fuel means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under 42 U.S.C. 7545, and includes fuel derived from animal wastes, including poultry fats and poultry wastes, and other waste materials, or from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater but not biodiesel as defined in part (a).

(c) Biodiesel blend means a blend of petroleum-based diesel fuel with biodiesel.

(d) Biomass-based diesel blend means a blend of petroleum-based diesel fuel with biomass-based diesel.

(8) Labels.

All labels must meet the following specifications:

(a) For biodiesel blends containing more than 5 percent and no greater than 20 percent biodiesel by volume. The label is 3 inches (7.62 cm) wide  $\times$  2½ inches (6.35 cm) long.

"Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains either:

(b) The capital letter "B" followed immediately by the numerical value representing the volume percentage of biodiesel in the fuel (*e. g.*, "B-20") and then by the term "Biodiesel Blend"; or

(c) The term "Biodiesel Blend."

The band should measure 1 inch (2.54 cm) deep. Spacing of the text in the band is 1/4 inch (.64cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. Directly underneath the black band, the label shall read "contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent."

The script underneath the black band must be centered horizontally, with 1/8 inch (.32 cm) between each line. The bottom line of type is 1/4 inch (.64 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label.

(9) For biomass-based diesel blends containing more than 5 percent and no greater than 20 percent biomass-based diesel by volume. The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains either:

- a) the numerical value representing the volume percentage of biomass-based diesel in the fuel followed immediately by the percentage symbol (e.g., "20 %") and then by the term "Biomass-Based Diesel Blend"; or
- b) the term "Biomass-Based Diesel Blend." The band should measure one inch (2.54 cm) deep. Spacing of the text in the band is ¼ inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. Directly underneath the black band, the label shall read "contains biomass-based diesel or biodiesel in quantities between 5% and 20%." The script underneath the black band must be centered horizontally, with c inch (.32 cm) between each line. The bottom line of type is ¼ inch (.64 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label.

(10) For biodiesel blends containing more than 20 percent biodiesel by volume. The requirements are the same as in Section (8) (a), except that the black band at the top of the label shall contain the capital letter "B" followed immediately by the numerical value representing the volume percentage of biodiesel in the fuel (e.g., "B-70") and then the term "Biodiesel Blend." In addition, the words directly underneath the black band shall read "contains more than 20 percent biomass-based diesel or biodiesel."

(11) For biomass-based diesel blends containing more than 20 percent biomass-based diesel by volume. The requirements are the same as in Section (9) (a), except that the black band at the top of the label shall contain the numerical value representing the volume percentage of biomass-based diesel in the fuel followed immediately by the percentage symbol (e.g., "70%") and then the term "Biomass-Based Diesel Blend." In addition, the words directly underneath the black band shall read "contains more than 20 percent biomass-based diesel or biodiesel."

(12) For 100% biodiesel. The requirements are the same as in Section (8) (a), except that the black band at the top of the label shall contain the phrase "B-100 Biodiesel." In addition, the words directly underneath the black band shall read "contains 100 percent biodiesel."

(13) For 100% biomass-based diesel. The requirements are the same as in Section (9) (a), except that the black band at the top of the label shall contain the phrase "100% Biomass-Based Diesel." In addition, the words directly underneath the black band shall read "contains 100 percent biomass-based diesel."

(14) Labels.

- (a) The background color on all the labels for biomass and biomass diesel blends is Orange: PMS 1495 or its equivalent. The knock-out type within the black band is Orange: PMS 1495 or its equivalent. All other type is process black. All borders are process black. All colors must be non-fade.
- (b) For biodiesel and biodiesel blends. The background color on all the labels is Blue: PMS 277 or its equivalent. The knock-out type within the black band is Blue: PMS 277 or its equivalent. All other type is process black. All borders are process black. All colors must be non-fade.

(15) Labels Graphics for biodiesel, biomass and biodiesel and biomass diesel blends as follows:

**B-100 Biodiesel**

**contains 100 percent  
biodiesel**

**100% Biomass-  
Based Diesel**

**contains 100 percent  
biomass-based diesel**

**B-20 Biodiesel  
Blend**

**contains biomass-based diesel  
or biodiesel in quantities  
between 5 percent and  
20 percent**

**20% Biomass-  
Based Diesel Blend**

**contains biomass-based diesel  
or biodiesel in quantities  
between 5 percent and  
20 percent**

**SUMMARY OF LABELING REQUIREMENTS FOR BIODIESEL FUELS**

**APP. A - SUMMARY OF LABELING REQUIREMENTS FOR BIODIESEL FUELS**

Fuel type	Blends of 5 percent or less	Blends of more than 5 but not more than 20 percent			Blends of more than 20 percent			Pure (100%) Biodiesel or Biomass-Based diesel		
		Header	Text	Color	Header	Text	Color	Header	Text	Color
<b>Biodiesel</b>	No label required	Header	Text	Color	Header	Text	Color	Header	Text	Color
		Either "B-XX Biodiesel Blend" or "Biodiesel Blend"	contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent	Blue	B-XX Biodiesel Blend	contains more than 20 percent biomass-based diesel or biodiesel	Blue	B-100 Biodiesel	contains 100 percent biodiesel	Blue
<b>Biomass-Based Diesel</b>	No label required	Header	Text	Color	Header	Text	Color	Header	Text	Color
		Either "XX% Biomass-Based Diesel Blend" or "Biomass-Based Diesel Blend"	contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent	Orange	XX% Biomass-Based Diesel Blend	contains more than 20 percent biomass-based diesel or biodiesel	Orange	100% Biomass-Based Diesel	contains 100 percent biomass-based diesel	Orange

(16) Standard Method of Test.

- a) As authorized by M.G.L. c. 94, §§ 295I and 295G, the standard method of test for distillation of gasoline for the purpose of determining end point is prescribed as the current "Standard Method of Test for Distillation of Petroleum Products" as published by the American Society for Testing and Materials (ASTM) and designated as
  1. D-86. The test conditions prescribed in Group 1 (Table 1) of D-86 shall be used regardless of "Sample Characteristics" which may place limitations on vapor pressure and/or end point.
- b) As authorized by M.G.L. c. 94, §§ 295I and 295G, the standards for viscosity classification for automotive lubricating oil shall be those of the current recommendations of the Society of Automotive engineers (SAE) entitled "Crankcase Oil Viscosity Classification". The necessary viscosity determinations shall be made by the current ASTM standard methods which are designated in the above mentioned SAE Crankcase Oil Viscosity Classification.

2.10: Minimum Standards of Strength and Quality for Anti-freeze

- (1) Sampling and preparation of anti-freeze shall be in accordance with ASTM Method: D1176.
- (2) Maximum Freezing point of anti-freeze solution having Methanol Base shall be -46°F., 50% by volume in distilled water mixture. (ASTM Method: D1177).
- (3) Maximum freezing point of anti-freeze solution having an Ethylene Glycol Base shall be -34°F. with 50% by volume in distilled water mixture. (ASTM Method: D1177).
- (4) The minimum equilibrium boiling point for anti-freeze having a Methanol Base shall be 148.5°F. (ASTM Method: D1120).
- (5) The minimum equilibrium boiling point for anti-freeze having an Ethylene Glycol Base shall be 300°F. (ASTM Method: D1120).
- (6) Specific gravity, 60/60F for anti-freeze having Methanol Base shall be minimum 0.790, maximum 0.815. (ASTM Method: D1122).

(7) Specific gravity, 60/60F for anti-freeze having Ethylene Glycol Base shall be minimum 1.114, maximum 1.150. (ASTM Method: D1122).

(8) The maximum ash content by weight for anti-freeze having Methanol Base shall be 3.5%. (ASTM Method: D1119).

(9) The maximum ash content by weight for anti-freeze having an Ethylene Glycol Base shall be 5.0%. (ASTM Method: D1119).

(10) The maximum water content by weight for anti-freeze Methanol and Ethylene Glycol Base shall be 5.0%. (ASTM Method: D1123).

(11) Corrosion, 33% by volume in water for copper, brass, steel, and cast iron 10 mg. and for solder and aluminum 20 mg. maximum loss per specimen. (ASTM Method: D1384).

(12) Foaming, 33% by volume in water; height of foam, 150 ml. maximum; and break time, five seconds maximum. (ASTM Method: D1881).

**2.11: Standards for the Various Grades of Heating Oils Requiring Manufacturers or Distributors to Furnish Samples of the Same, and Providing for the Entry and Inspection of the Premises of Such Manufacturers or Distributors, and the Inspection of Heating Oils Stored Thereon**

(1) Scope. These specifications cover grades of heating oil intended for use in various types of fuel burning equipment under various operating conditions.

(2) General Requirements.

(a) The grades of heating oil specified herein shall be homogeneous hydrocarbon oils, free from inorganic acid, and free from excessive amounts of solid or fibrous foreign matter likely to make frequent cleaning of strainers necessary.

(b) Grades containing residual oil shall remain homogeneous in normal storage and not separate into light and heavy components.

(3) Detailed Requirements.

(a) The various grades of heating oil shall conform to the requirements shown in 202 CMR 2.11: *Table 1*.

(b) The statutory regulations of health or environmental agencies will supersede those outlined in 202 CMR 2.11: *Table 1* when they are more stringent than as outlined. Higher sulfur may be permitted in accordance with Massachusetts Department of Environmental Protection regulations which provide for exceptions where approved equipment results in lowering the air polluting effect.

(4) Methods of Test.

(a) The detailed requirements enumerated in the minimum standards shall be determined in accordance with the following American Society for Testing and Materials Methods:

1. Flash Point: Pensky-Martens Closed Tester (ASTM D-93)
2. Pour Point: ASTM D-97
3. Water and Sediment:
  - Grades 1, 2, 4 and 5: ASTM D-1796
  - Grade 6: ASTM D-95 and ASTM D-473
4. Ash: ASTM D-482
5. Distillation: ASTM D-86
6. Viscosity:
  - Grades 1 and 2 (Kinematic): ASTM D-445
  - Grades 4, 5 and 6 (Saybolt): ASTM D-88
7. Gravity: Hydrometer Method - ASTM D-287
8. Corrosion: Copper Strip, ASTM D-130, 3 hours @ 122F.
9. Sulfur: Any grade may be determined by the following:
  - Bomb Method - ASTM D-129
  - Quartz-Tube Method - ASTM D-1551
  - High Temperature Method - ASTM D-1552
  - X-Ray Spectrograph Method - ASTM D-2622

In addition, sulfur in Grade 1 may be determined by the Lamp Method - ASTM D-1266

(b) Every manufacturer or distributor of heating oils shall submit samples of said products when requested by the Director of Standards.

(c) The Director of Standards, or his authorized agent, may enter each place where heating oils are stored or kept for sale and any vehicle used for its conveyance and may inspect said oil or take therefrom samples for analysis. The Director shall cause each sample taken to be analyzed or otherwise satisfactorily tested and shall record and preserve as evidence the results thereof.

Table 1

MINIMUM STANDARDS FOR HEATING OILS

Grade	Flash Point	Pour Point	Water & Sed.	Ash % by	Distillation		
	°F	°F	°F	°F	10%	90%	
	Min	Max	Max	Max	Max	Min	Max
1	100	0	trace		420		550
2	115	20	.05			540	640
4	130	20	.50	.10			
5	130		1.00	.10			
6	150		2.00				

Grade	Saybolt Viscosity, sec.				Kinematic Viscosity @100°F		Gravity deg. API	Copper Strip Corrosion	Sulfur %
	Universal @ 100°F		Furol @122°F		Min	Max			
	Min	Max	Min	Max	Min	Max	Min	Max	Max
1					1.4	2.2	35	No.3	.5
2					2.0	3.6	30		.5
4	45 (light)	125 (light)							2.5
5	150 (heavy)	300 (heavy)							
6	350	750		300					2.5

REGULATORY AUTHORITY

202 CMR 2:00 M.G.L. c.94§ § 9,239A 249H, 295I, 303H and c. 98 § § 13, 28A, 28H, 29 and 46A.

Appendix 2

202 CMR 3.00 MODEL STATE PACKAGING AND LABELING



## 202 CMR: DIVISION OF STANDARDS

### 202 CMR 3.00: MODEL STATE PACKAGING AND LABELING

#### Section 3.01: Foreword

#### 3.02: Application

#### 3.03: Definitions

#### 3.04: Identity

#### 3.05: Declaration of Identity: Non-consumer Package

#### 3.06: Declaration of Responsibility: Consumer and Non-consumer Packages

#### 3.07: Declaration of Quantity: Consumer Packages

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#### 3.09: Prominence and Placement: Consumer Packages

#### 3.10: Prominence and Placement: Non-consumer Packages

#### 3.11: Requirements: Specific Consumer Commodities, Packages

#### 3.12: Exemptions

#### 3.13: Variation to be Allowed

#### 3.01: Foreword

The Model State Packaging and Labeling Regulation was first adopted during the 37th National Conference on Weights and Measures in 1952. Reporting to the Conference, the Committee on Legislation stated:

The National Conference should adopt a model package regulation for the guidance of those States authorized to adopt such a regulation under provisions of their weights and measures laws. Since so much of the work of weights and measures officials in the package field concerns food products, the importance of uniformity between the Federal Food and Drug Administration's regulations and any model regulations to be adopted by this Conference cannot be overemphasized.

Since its inception, the Model Packaging Regulation has been continually revised to meet the complexities of an enormous expansion in the packaging industry--an expansion which, in late 1966, brought about the passage of the Fair Packaging and Labeling Act. Recognizing the need for compatibility with the Federal Act, the Committee on Laws and Regulations of the 53rd National Conference in 1968 amended the Model Packaging and Labeling Regulation to parallel regulations adopted by Federal agencies under FPLA. The process of amending and revising this Regulation is a continuing one, in order to keep it current with practices in the packaging field and make it compatible with appropriate Federal Regulations.

### 3.02: Application

202 CMR 3.00 shall apply to packages and to commodities in package form, but shall not apply to:

- (1) inner wrappings not intended to be individually sold to the customer,
- (2) shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors, but in no event shall this exclusion apply to packages of consumer or Non-consumer commodities, as defined herein,
- (3) auxiliary containers or outer wrappings used to deliver packages of such commodities to retail customers if such containers or wrappings bear no printed matter pertaining to any particular commodity,
- (4) containers used for retail tray pack displays when the container itself is not intended to be sold (e.g., the tray that is used to display individual envelopes of seasonings, gravies, etc. and the tray itself is not intended to be sold),
- (5) commodities put up in variable weights and sizes for sale intact and intended to be either weighed or measured at the time of sale, where no package quantities are represented, and where the method of sale is clearly indicated in close proximity to the quantity being sold, or
- (6) open carriers and transparent wrappers or carriers for containers when the wrappers or carriers do not bear any written, printed, or graphic matter obscuring the label information required by 202 CMR 3.00.

### 3.03: Definitions

Commodity in Package Form. The term "commodity in package form" shall be construed to mean a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be construed to be a commodity in package form. Where the term "package" is used in 202 CMR 3.00, it shall be construed to mean "commodity in package form" as herein defined.

Consumer Package: Package of Consumer Commodity. A "consumer package" or "package of consumer commodity" shall be construed to mean a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

Label. The term "label" shall be construed to mean any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon or adjacent to a consumer commodity or a package containing any consumer commodity, for purposes of branding, identifying, or giving any information with respect to the commodity or to the contents of the package, except an inspector's tag or other non-promotional matter affixed to or appearing upon a consumer commodity shall not be deemed to be a label requiring the repetition of label information required by 202 CMR 3.00.

Multi-Unit Package. The term "multi-unit package" shall be construed to mean a package containing two or more individual packages of the same commodity, in the same quantity, with the individual packages intended to be sold as part of the multi-unit package but capable of being individually sold in full compliance with all requirements of 202 CMR 3.00.

Non-consumer Package: Package of Non-consumer Commodity. A "Non-consumer package" or "package of Non-consumer commodity" shall be construed to mean any commodity in package form other than a consumer package, and particularly a package intended solely for industrial or institutional use or for wholesale distribution.

Person. The term "person" shall be construed to mean both singular and plural, and shall include any individual, partnership, company, corporation, association, and society.

Principal Display Panel or Panels. The term "principal display panel or panels" shall be construed to mean that part, or those parts, of a label that is, or are, so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display and purchase. Wherever a principal display panel appears more than once on a package, all requirements pertaining to the "principal display panel" shall pertain to all such "principal display panels."

Random Package. The term "random package" shall be construed to mean a package that is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights; that is, packages of the same consumer commodity with no fixed pattern of weight.

#### 3.04: Identity

(1) Declaration of Identity: Consumer Package. A declaration of identity on a consumer package shall appear on the principal display panel, and shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like.

(2) Parallel Identity Declaration: Consumer Package. A declaration of identity on a consumer package shall appear generally parallel to the base on which the package rests as it is designed to be displayed.

#### 3.05: Declaration of Identity: Non-consumer Package

A declaration of identity on a Non-consumer package shall appear on the outside of a package and shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like.

#### 3.06: Declaration of Responsibility: Consumer and Non-consumer Packages

Any package kept, offered, or exposed for sale, or sold, at any place other than on the premises where packed shall specify conspicuously on the label of the package the name and address of the manufacturer, packer, or distributor. The name shall be the actual corporate name, or, when not incorporated, the name under which the business is conducted. The address shall include street address, city, state, and ZIP Code; however, the street address may be omitted if this is shown in a current city directory or telephone directory. The requirement for inclusion of the ZIP Code shall apply only to labels that have been developed or revised after July 1, 1968.

If a person manufactures, packs, or distributes a commodity at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where the commodity was manufactured or packed or is to be distributed, unless such statement would be misleading. Where the commodity is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such commodity, such as "Manufacture for and packed by \_\_\_\_\_," "Distributed by \_\_\_\_\_," or any other wording of similar import that expresses the facts.

### 3.07: Declaration of Quantity: Consumer Packages

(1) Largest Whole Unit. Where 202 CMR 3.00 requires that the quantity declaration be in terms of the largest whole unit, the declaration shall, with respect to a particular package, be in terms of the largest whole unit of weight or measure, with any remainder expressed in

- (a) common or decimal fractions of such largest whole unit, or in
- (b) the next smaller whole unit, or units, with any further remainder in terms of common or decimal fractions of the smallest unit present in the quantity declaration.

(2) Net Quantity. A declaration of net quantity of the commodity in the package, exclusive of wrappers and any other material packed with such commodity, shall appear on the principal display panel of a consumer package, and, unless otherwise specified in 202 CMR 3.00 (see 202 CMR 3.07(8)), shall be in terms of the largest whole unit.

- (a) Use of "Net Weight." The term "net weight" shall be used in conjunction with the declaration of quantity in terms of weight; the term may either precede or follow the declaration of weight.
- (b) Lines of Print or Type. A declaration of quantity may appear on one or more lines of print or type.

(3) Terms: Weight, Liquid Measure, or Count. The declaration of the quantity of a particular commodity shall be expressed in terms of liquid measure if the commodity is liquid, or in terms of weight if the commodity is solid, semisolid, viscous, or a mixture of solid and liquid, or in terms of numerical count. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particular commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity.

(4) Combination Declaration.

- (a) A declaration of quantity in terms of weight shall be combined with appropriate declarations of the measure, count, and size of the individual units unless a declaration of weight alone is fully informative.
- (b) A declaration of quantity in terms of measure shall be combined with appropriate declarations of the weight, count, and size of the individual units unless a declaration of measure alone is fully informative.
- (c) A declaration of quantity in terms of count shall be combined with appropriate declarations of the weight, measure, and size of the individual units unless a declaration of count alone is fully informative.

(5) Units: Weight, Measure. A declaration of quantity

- (a) in units of weight shall be in terms of the avoirdupois pound or ounce;
- (b) in units of liquid measure shall be in terms of the United States gallon of 231 cubic inches or liquid-quart, liquid-pint, or fluid-ounce subdivisions of the gallon, and shall express the volume at 68°F (20°C), except in the case of petroleum products, for which the declaration shall express the volume at 60°F (15.6°C), and except also in the case of a commodity that is normally sold and consumed while frozen,

for which the declaration shall express the volume at the frozen temperature, and except also in the case of a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at 40°F (4°C);

(c) in units of linear measure shall be in terms of the yard, foot, or inch;

(d) in units of area measure, shall be in terms of the square yard, square foot, or square inch;

(e) in units of dry measure shall be in terms of the United States bushel of 2,150.42 cubic inches, or peck, dry-quart, and dry-pint subdivisions of the bushel;

(f) in units of cubic measure shall be in terms of the cubic yard, cubic foot, or cubic inch: Provided, that in the case of a commodity packed for export shipment, the declaration of quantity may be in terms of the metric system of weight or measure.

(6) Abbreviations. Any of the following abbreviations, and none other, may be employed in the quantity statement on a package of commodity:

avoirdupois	avdp	quart	qt
cubic	cu	square	sq
feet or foot	ft	weight	wt
fluid	fl	yard	yd
gallon	gal	cubic centimeter	cc
inch	in	gram	g
liquid	liq	kilogram	kg
ounce	oz	microgram	mcg
pint	pt	milligram	mg
pound	lb	milliliter	ml

(There normally are no periods following, nor plural forms of, these abbreviations. For example, "oz" is the abbreviation for both "ounce" and "ounces.")

(7) Units with Two or More Meanings. When the term "ounce" is employed in a declaration of liquid quantity, the declaration shall identify the particular meaning of the term by the use of the term "fluid"; however, such distinction may be omitted when, by association of terms (for example, as in "1 pint 4 ounces"), the proper meaning is obvious. Whenever the declaration of quantity is in terms of the dry pint or dry quart, the declaration shall include the word "dry."

(8) Prescribed Units.

(a) Less than One Foot, One Square Foot, One Pound, or One Pint. The declaration of quantity shall be expressed in terms of

1. in the case of length measure of less than one foot, inches and fractions of inches;
2. in the case of area measure of less than one square foot, square inches and fractions of square inches;
3. in the case of weight of less than one pound, ounces and fractions of ounces;

4. in the case of fluid measure of less than one pint, ounces and fractions of ounces;

*Provided*, that the quantity declaration appearing on a random package may be expressed in terms of decimal fractions of the largest appropriate unit, the fraction being carried out to not more than two decimal places.

(b) Four Feet, Four Square Feet, Four Pounds, One Gallon or More. In the case of

1. length measure of four feet or more the declaration of quantity shall be expressed in terms of feet, followed in parentheses by a declaration of yards and common or decimal fractions of the yard, or in terms of feet followed in parentheses by a declaration of yards with any remainder in terms of feet and inches. In the case of
2. area measure of four square feet or more;
3. weight of four pounds or more;
4. fluid measure of one gallon or more the declaration of quantity shall be expressed in terms of the largest whole unit.

(c) Weight: Dual Quantity Declaration. On packages containing one pound or more but less than four pounds, the declaration shall be expressed in ounces and, in addition, shall be followed by declaration of parentheses, expressed in terms of the largest whole unit: *Provided*, that the quantity declaration appearing on a random package maybe expressed in terms of pounds and decimal fractions of the pound carried out to not more than two decimal places.

(d) Fluid Measure: Dual Quantity Declaration. On packages containing one pint or more but less than one gallon, the declaration shall be expressed in ounces and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.

(e) Length Measure: Dual Quantity Declaration. On packages containing one foot but less than four feet, the declaration shall be expressed in inches and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.

(f) Area Measure: Dual Quantity Declaration. On packages containing one square foot but less than four square feet, the declaration shall be expressed in square inches and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.

(g) Bidimensional Commodities. For bidimensional commodities (including roll-type commodities) the quantity declaration shall be expressed,

1. if less than one square foot, in terms of linear inches and fractions of linear inches;
2. if at least one square foot but less than four square feet, in terms of square inches followed in parentheses by a declaration of both the length and width, each being in terms of the largest whole unit: *Provided*, that no square inch declaration is required for a bidimensional commodity of four inches width or less; a dimension of less than two feet may be stated in inches within the parenthetical; and commodities consisting of usable individual units (except roll-type commodities with individual usable units created by perforations, for which see 202 CMR 3.07(5)

(h). Count: Ply) require a declaration of unit area but not a declaration of total area of all such units; if four square feet or more, in terms of square feet followed in parentheses by a declaration of the length and width in terms of the largest whole unit: *Provided*, that no declaration in square feet is required for a bidimensional commodity with a width of four inches or less; a dimension of less than two feet may be stated in inches within the parenthetical; and no declaration in square feet is required for commodities for which the length and width measurements are critical in terms of end use (such as tablecloths or bed sheets) if such commodities clearly present the length and width measurements on the label. (h) Count: Ply. If the commodity is in individually usable units of one or more components or ply, the quantity

declaration shall, in addition to complying with other applicable quantity declaration requirements of this regulation, include the number of ply and the total number of usable units.

Roll-type commodities, when perforated so as to identify individual usable units, shall not be deemed to be made up of usable units; however, such roll-type commodities shall be labeled in terms of total area measurement, number of ply, count of usable units, and dimensions of a single usable unit.

(9) Fractions. A statement of net quantity of contents of any consumer commodity may contain common or decimal fractions. A common fraction shall be in terms of ½'s, ¼'s, c's, 1/16's, or 1/32's, except that

(a) if there exists a firmly established general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity, they may be employed, and

(b) if linear measurements are required in terms of yards or feet, common fractions may be in terms of a's.

A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than two places.

(10) Supplementary Declarations.

(a) Supplementary Quantity Declarations. The required quantity declaration may be supplemented by one or more declarations of weight, measure, or count, such declaration appearing other than on a principal display panel. Such supplemental statement of quantity of contents shall not include any terms qualifying a unit of weight, measure, or count, that tends to exaggerate the amount of commodity contained in the package (e.g., "giant" quart, "full" gallon, "when packed," "minimum," or words of similar import).

(b) Metric System Declarations. A separate statement of the net quantity of contents in terms of the metric system is not regarded as a supplemental statement, and a statement of quantity in terms of the metric system of weight or measure may also appear on the principal display panel or on other panels.

(11) Qualification of Declaration Prohibited. In no case shall any declaration of quantity be qualified by the addition of the words "when packed," "minimum," or "not less than," or any words of similar import, nor shall any unit of weight, measure, or count be qualified by any term (such as "jumbo," "giant," "full," or the like) that tends to exaggerate the amount of commodity.

### 3.08: Declaration of Quantity: Non-consumer Packages

(1) Location. A Non-consumer package shall bear on the outside a declaration of the net quantity of contents. Such declaration shall be in terms of the largest whole unit (see 202 CMR 3.07(1) Largest Whole Unit).

(2) Terms: Weight, Liquid Measure, or Count. The declaration of the quantity of a particular commodity shall be expressed in terms of liquid measure if the commodity is liquid, or in terms of weight if the commodity is solid, semisolid, viscous, or a mixture of solid and liquid, or in terms of numerical count. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particular commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity.

(3) Units: Weight, Measure. A declaration of quantity

(a) in units of weight shall be in terms of the avoirdupois pound or ounce;

(b) in units of liquid measure shall be in terms of the United States gallon of 231 cubic inches or liquid-quart, liquid-pint, or fluid-ounce subdivisions of the gallon, and shall express the volume at 68°F (20°C), except in the case of petroleum products, for which the declaration shall express

the volume at 60°F (15.6°C), and except also in the case of a commodity that is normally sold and consumed while frozen, for which the declaration shall express the volume at the frozen temperature, and except also in the case of a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at 40°F (4°C);

- (c) in units of linear measure shall be in terms of the yard, foot, or inch;
- (d) in units of area measure, shall be in terms of the square yard, square foot, or square inch;
- (e) in units of dry measure shall be in terms of the United States bushel of 2,150.42 cubic inches, or peck, dry-quart and dry-pint subdivisions of the bushel;
- (f) in units of cubic measure shall be in terms of the cubic yard, cubic foot, or cubic inch:

*Provided*, that nothing in 202 CMR 3.08(3) shall prohibit the labeling of Non-consumer packages in terms of units of the metric system.

(4) Abbreviations. Any generally accepted abbreviation of a unit name may be employed in the quantity statement on a package of commodity. (For commonly accepted abbreviations, see 202 CMR 3.07(6) Abbreviations.)

(5) Character of Declaration: Average. The average quantity of contents in the package of a particular lot, shipment, or delivery shall at least equal the declared quantity, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment, delivery, or lot compensate for such shortage.

### 3.09: Prominence and Placement: Consumer Packages

(1) General. All information required to appear on a consumer package shall appear thereon in the English language and shall be prominent, definite, and plain, and shall be conspicuous as to size and style of letters and numbers and as to color of letters and numbers in contrast to color of background. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

(a) Location. The declaration or declarations of quantity of the contents of a package shall appear in the bottom 30% of the principal display panel or panels, except as otherwise provided in 202 CMR 3.11(7) Cylindrical Containers.

(b) Style of Type or Lettering. The declaration or declarations of quantity shall be in such a style of type or lettering as to be boldly, clearly, and conspicuously presented with respect to other type, lettering, or graphic material on the package, except that a declaration of net quantity blown, formed, or molded on a glass or plastic surface is permissible when all label information is blown, formed, or molded on the surface.

(c) Color Contrast. The declaration or declarations of quantity shall be in a color that contrasts conspicuously with its background, except that a declaration of net quantity blown, formed, or molded on a glass or plastic surface shall not be required to be presented in a contrasting color if no required label information is on the surface in a contrasting color.

(d) Free Area. The area surrounding the quantity declaration shall be free of printed information

1. above and below, by a space equal to at least the height of the lettering in the declaration, and
2. to the left and right, by a space equal to twice the width of the letter "N" of the style and size of type used in the declaration.

(e) Parallel Quantity Declaration. The quantity declaration shall be presented in such a manner as to be generally parallel to the declaration of identity and to the base on which the package rests as it is designed to be displayed.



(2) Calculation of Area of Principal Display Panel for Purposes of Type Size. The square-inch area of the principal display panel shall be

- (a) in the case of a rectangular container, one entire side which properly can be considered to be the principal display panel, the product of the height times the width of that side;
- (b) in the case of a cylindrical or nearly cylindrical container, 40% of the product of the height of the container times the circumference; or
- (c) in the case of any other shaped container, 40% of the total surface of the container, unless such container presents an obvious principal display panel (e.g., the top of a triangular or circular package of cheese, or the top of a can of shoe polish), the area shall consist of the entire such surface.

Determination of the principal display panel shall exclude tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles or jars.

(d) Minimum Height of Numbers and Letters. The height of any letter or number in the required quantity declaration shall be not less than that shown in Table 1 in 202 CMR 3.09 with respect to the square-inch area of the panel, and the height of each number of a common fraction shall meet one-half the minimum height standards.

(e) Numbers and Letters: Proportion. No number or letter shall be more than three times as high as it is wide.

TABLE 1.  
Minimum Height of Numbers and Letters

Square-inch area of Principal display panel	Minimum height of numbers and letter of container	Minimum height; label information Blown, formed or Molded on surface
5 square inches and less.	1/16 inch	1/8 inch
Greater than 5 square inches and not greater than 25 square inches.	1/8 inch	3/16 inch
Greater than 25 square inches and not greater than 100 square inches.	3/16 inch	¼ inch
Greater than 100 square inches and not greater than 400 square inches.	¼ inch	5/16 inch
Greater than 400 square inches.	½ inch	9/16 inch

**3.10: Prominence and Placement: Non-consumer Packages**

All information required to appear on a Non-consumer package shall be definitely and clearly stated thereon in the English language. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

**3.11: Requirements: Specific Consumer Commodities, Packages, Containers**

(1) Display Card Package. For an individual package affixed to a display card, or for a commodity and display card together comprising a package, the type size of the quantity declaration is governed by the dimensions of the display card.

(2) Eggs. When cartons containing 12 eggs have been designed so as to permit division in half by the retail purchaser, the required quantity declaration shall be so positioned as to have its context destroyed when the carton is divided.

(3) Aerosols and Similar Pressurized Containers. The declaration of quantity on an aerosol package, and on a similar pressurized package, shall disclose the net quantity of the commodity (including propellant), in terms of weight, that will be expelled when the instructions for use as shown on the container are followed.

(4) Multi-Unit Packages. Any package containing more than one individual "commodity in package form" (see 202 CMR 3.03(1)) of the same commodity shall bear on the outside of the package a declaration of

(a) the number of individual units,

(b) the quantity of each individual unit, and

(c) the total quantity of the contents of the multi-unit package: *Provided*, that the requirement for a declaration of the total quantity of contents of a multi-unit package shall be effective with respect to those labels revised after the effective date of this regulation, or as of January 1, 1970, whichever occurs first. Any such declaration of total quantity shall not be required to include the parenthetical quantity statement of a dual quantity representation.

(5) Combination Packages. Any package containing individual units of dissimilar commodities (such as an antiquing kit, for example) shall bear on the label of the package a quantity declaration for each unit.

(6) Variety Packages. Any package containing individual units of reasonably similar commodities (such as, for example, seasonal gift packages, variety packages of cereal) shall bear on the label of the package a declaration of the total quantity of commodity in the package.

(7) Cylindrical Containers. In the case of cylindrical or nearly cylindrical containers, information required to appear on the principal display panel shall appear within that 40% of the circumference which is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

(8) Measurement of Container-Type Commodities, How Expressed.

(a) General. Commodities designed and sold at retail to be used as containers for other materials or objects, such as bags, cups, boxes, and pans, shall be labeled with the declaration of net quantity as follows:

1. For bag-type commodities, in terms of count followed by linear dimensions of the bag (whether packaged in a perforated roll or otherwise).

When the unit bag is characterized by two dimensions because of the absence of a gusset, the width and length will be expressed in inches, except that a dimension of 2 feet or more will be expressed in feet with any remainder in terms of inches or common or decimal fractions of the foot. (Example: "25 bags, 17 in x 20 in" or "100 bags, 20 in x 2 ft 6 in" or 50 bags, 20 in x 2½ ft.")

When the unit bag is gusseted, the dimensions will be expressed as width, depth, and length, in terms of inches, except that any dimension of two feet or more will be expressed in feet with any remainder in terms of inches or the common or decimal fractions of the foot. (Examples: "25 bags, 17 in. x 4 in x 20 in" or "100 bags, 20 in x 12 x 2½ ft.")

2. For other square, oblong, rectangular, or similarly shaped containers, in terms of count followed by length, width, and depth, except depth need not be listed when less than two inches. (Example: "2 cake pans, 8 in x 8 in" or "roasting pan, 12 in x 8 in x 3 in.")

3. For circular or other generally round-shaped containers, except cups, and the like, in terms of count followed by diameter and depth, except depth need not be listed when less than two inches. (Example: "4 pie pans, 8 in diameter x 4 in.")

(b) Capacity. When the functional use of the container is related by label references in standard terms of measure to the capability of holding a specific quantity of substance or class of substances such references shall be a part of the net quantity statement and shall specify capacity as follows:

1. Liquid measure for containers which are intended to be used for liquids, semisolids, viscous materials, or mixtures of solids and liquids. The expressed capacity will be stated in terms of the largest whole unit (gallon, quart, pint, ounce), with any remainder in terms of the common or decimal fraction of that unit. (Example: Freezer Boxes -- "4 boxes, 1-qt capacity, 5 in x 4 in x 3 in.")

2. Dry measure for containers which are intended to be used for solids. The expressed capacity will be stated in terms of the largest whole unit (bushel, peck), with any remainder in terms of the common or decimal fraction of that unit. (Example: Leaf Bags -- "8 bags, 6-bushel capacity, 3 ft x 5 ft.")

3. Where containers are used as liners for other more permanent containers, in the same terms as are normally used to express the capacity of the more permanent container. (Example: Garbage Can Liners -- "10 liners, 2 ft 6 in x 3 ft 9 in, fits up to 30-gallon cans.") Notwithstanding the above requirements, the net quantity statement for containers such as cups will be listed in terms of count and liquid capacity per unit. (Example: "24 cups, 6 fl oz capacity.") For purposes of 202 CMR 3.11(8), the use of the terms "capacity," "diameter," and "fluid" is optional.

#### (9) Textile Products, Threads, and Yarns.

(a) Wearing Apparel. Wearing apparel (including non-textile apparel and accessories such as leather goods and footwear) sold as single-unit items, or if normally sold in pairs (such as hosiery, gloves, and shoes) sold as single-unit pairs, shall be exempt from the requirements for a net quantity statement by count, as required by 202 CMR 3.07(3).

(b) Textiles. Bed sheets, blankets, pillowcases, comforters, quilts, bed-spreads, mattress covers and pads, afghans, throws, dresser and other furniture scarfs, tablecloths and napkins, flags, curtains, drapes, dish towels, dishcloths, towels, face cloths, utility cloths, bath mats, carpets and rugs, pot holders, fixture and appliance covers, non-rectangular diapers, slip covers, etc., shall be exempt from the requirements of 202 CMR 3.07(8)(g):

*Provided, that*

1. The quantity statement for fitted sheets and mattress covers shall state, in inches, the length and width of the mattress for which the item is designed, such as "twin," "double," "king," etc. (Example: "Twin Fitted Sheet for 39 x 75 in mattress.")

2. The quantity statement for flat sheets shall state the size designation of the mattress for which the sheet is designed, such as "twin," "double," "king," etc. The quantity statement also shall state, in inches, the length and width of the mattress for which the sheet is designed, followed in parentheses by a statement, in inches, of the length and width of the sheet before hemming. (Example: "Double Flat Sheet for 54 x 75 in mattress (81 x 104 in before hemming)").

3. The quantity statement for pillowcases shall state the size designation of the pillow for which the pillowcase is designed, such as "youth," "standard," and "queen," etc. The quantity statement also shall state in inches, the length and width of the pillow for which the pillowcase is designed, followed in parentheses by a statement, in inches, of the length and width of the pillowcase before hemming. (Example: "Standard Pillowcase for 20 x 26 in pillow (42 x 36 before hemming)").

4. The quantity statement for blankets, comforters, quilts, bedspreads, mattress pads, afghans, and throws shall state, in inches, the length and width of the finished item. The quantity statement also may state the length of any ornamentation and the size designation of the mattress for which the item is designed, such as "twin," "double," "king," etc.

5. The quantity statement for tablecloths and napkins shall state, in inches, the length and width of the finished item. The quantity statement also may state parenthetically, in inches, the length and width of the item before hemming and properly identified as such.

6. The quantity statement for curtains, drapes, flags, furniture scarfs, etc. shall state, in inches, the length and width of the finished item. The quantity statement also may state parenthetically, in inches, the length of any ornamentation.

7. The quantity statement for carpets and rugs shall state, in feet, with any remainder in common or decimal fractions of the foot or in inches, the length and width of the item. The quantity statement also may state parenthetically, in inches, the length of any ornamentation.

8. The quantity statement for woven dish towels, dish cloths, towels, face cloths, utility cloths, bath mats, etc. shall state, in inches, the length and width of the item. The quantity statement for such items, when knitted, need not state the dimensions.

9. The quantity statement for textile products such as potholders, fixture and appliance covers, non-rectangular diapers, slip covers, etc. shall be stated in terms of count and may include size designations and dimensions.

10. The quantity statement for other than rectangular textile products identified in 202 CMR 3.11(9)(b)1 through 3.11(9)(b)8 shall state the geometric shape of the product and the dimensions which are customarily used in describing such geometric shape. (Example: "Oval Tablecloth 54 x 42 in," representing the maximum length and width in this case.)

11. The quantity statement for packages of remnants of textile products of assorted sizes, when sold by count, shall be accompanied by the term "irregular dimensions" and the minimum size of such remnants.

(c) Textiles: Variations from Declared Dimensions.

1. For an item with no declared dimension less than 24 inches, a minus variation greater than 3% of a declared dimension and a plus variation greater than 6% of a declared dimension should be considered unreasonable.

2. For an item with a declared dimension less than 24 inches, a minus variation greater than 6% of a declared dimension and a plus variation greater than 12% of a declared dimension should be considered unreasonable.

(d) Exemption: Variety Textile Packages. Variety packages of textiles which are required by reason of 202 CMR 3.07(4) to provide a combination declaration stating the quantity of each individual unit, shall be exempt from the requirements in 202 CMR 3.00 for:

1. Location (See 202 CMR 3.09(1)(a),
2. Free area (See 202 CMR 3.09(1)(d), and
3. Minimum height of numbers and letters (See 202 CMR 3.09(2).

(e) Sewing Threads, Handicraft Threads, Yarns. Sewing and handicraft threads shall be exempt from the requirements of 202 CMR 3.07(8)(b): Provided, that

1. The net quantity statement for sewing and handicraft threads shall be expressed in terms of yards.
2. The net quantity statement for yarns shall be expressed in terms of weight.
3. Thread products may, in lieu of name and address, bear a trademark, symbol, brand, or other mark that positively identifies the manufacturer, packer, or distributor, provided that such marks, employed to identify the vendor, shall be filed with the director.
4. Each unit of industrial thread shall be marked to show its net measure in terms of yards or its net weight in terms of avoirdupois pounds or ounces, except that ready-wound bobbins which are not sold separately, shall not be required to be individually marked but the package containing such bobbins shall be marked to show the number of bobbins contained therein and the net yards of thread on each bobbin.

### 3.12: Exemptions

(1) General. Whenever any consumer commodity or package of consumer commodity is exempted from the requirements for dual quantity declaration, the net quantity declaration required to appear on the package shall be in terms of the largest whole unit (except see 202 CMR 3.11(4)(c)).

(2) Random Packages. A random package bearing a label conspicuously declaring

(a) the net weight,

(b) the price per pound, and

(c) the total price shall be exempt from the type size, dual declaration, placement, and free area requirements of 202 CMR 3.00. In the case of a random package packed at one place for subsequent sale at another, neither the price per unit of weight nor the total selling price need appear on the package, provided the package label includes both such prices at the time it is offered or exposed for sale at retail. This exemption shall also apply to uniform weight packages of cheese and cheese products labeled in the same manner and by the same type of equipment as random packages exempted by 202 CMR 3.12.

(3) Small Confections. Individually wrapped pieces of "penny candy" and other confectionery of less than ½ ounce net weight per individual piece shall be exempt from the labeling requirements of 202 CMR 3.00 when the container in which such confectionery is shipped is in conformance with the labeling requirements of 202 CMR 3.00. Similarly, when such confectionery items are sold in bags or boxes, such items shall be exempt from the labeling requirements of 202 CMR 3.00, including the required declaration of net quantity of contents, when the declaration of the bag or box meets the requirements of 202 CMR 3.00.

(4) Individual Servings. Individual-serving-size packages of foods containing less than ½ ounce or less than ½ fluid ounce for use in restaurants, institutions, and passenger carriers, and not intended for sale at retail, shall be exempt from the required declaration of net quantity of contents specified in 202 CMR 3.00.

(5) Cuts, Plugs, and Twists of Tobacco and Cigars. When individual cuts, plugs, and twists of tobacco and individual cigars are shipped or delivered in containers that conform to the labeling requirements of 202 CMR 3.00, such individual cuts, plugs, and twists of tobacco and cigars shall be exempt from such labeling requirements.

(6) Reusable (Returnable) Glass Containers. Nothing in 202 CMR 3.00 shall be deemed to preclude the continued use of reusable (returnable) glass containers: Provided, that such glass containers ordered after the effective date of 202 CMR 3.00 shall conform to all requirements of 202 CMR 3.00.

(7) Cigarettes and Small Cigars. Cartons of cigarettes and small cigars, containing ten individual packages of 20 labeled in accordance with the requirements of 202 CMR 3.00 shall be exempt from the requirements set forth in 202 CMR 3.09(1)(a). Location, 202 CMR 3.09(2). Minimum Height of Numbers and Letters, and 202 CMR 3.11(4) Multi-Unit Packages: Provided, that such cartons bear a declaration of the net quantity of commodity in the package.

(8) Packaged Commodities with Labeling Requirements Specified in Federal Law. Packages of meat and meat products, poultry and poultry products, tobacco and tobacco products, insecticides, fungicides, rodenticides, alcoholic beverages, and seeds shall be exempt from the requirements set forth in 202 CMR 3.07(8)(c). Weight: Dual Declaration 202 CMR 3.07(8)(d). Fluid Measure: Dual Quantity Declaration, 202 CMR 3.07(8)(e). Length Measure: Dual Quantity Declaration 202 CMR 3.07(8)(f). Area Measure: Dual Quantity Declaration, 202 CMR 3.09(1)(a). Location, and 202 CMR 3.09(2). Minimum Height of Numbers and Letters:

*Provided*, that quantity labeling requirements for such products are specified in Federal Law, so as to follow reasonably sound principles of providing consumer information.

(9) Fluid Dairy Products, Ice Cream, and Similar Frozen Desserts.

- (a) When packaged in ½-liquid-pint and ½-gallon containers, are exempt from the requirements for stating net contents of eight fluid ounces and 64 fluid ounces, which may be expressed as ½ pint and ½ gallon, respectively.
- (b) When packaged in 1-liquid-pint, 1-liquid-quart, and ½ gallon containers, are exempt from the dual net contents declaration requirements of 202 CMR 3.07(8)(d).
- (c) When measured by and packaged in ½ liquid pint, 1-liquid pint, 1-liquid quart, ½-gallon, and 1-gallon measure containers as defined in "Measure Container Code of National Bureau of Standards Handbook 44," are exempt from the requirement of 202 CMR 3.09(1)(a) that the declaration of net contents be located within the bottom 30% of the principal display panel.
- (d) Milk and milk products when measured by and packaged in glass or plastic containers of ½-liquid pint, 1-liquid pint, 1-liquid quart, ½-gallon, and 1-gallon capacities are exempt from the placement requirement of 202 CMR 3.09(1)(a) that the declaration of net contents be located within the bottom 30% of the principal display panel, provided that other required label information is conspicuously displayed on the cap or outside closure, and the required net quantity of contents declaration is conspicuously blown, formed, or molded on, or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.

(10) Single Strength and Less Than Single Strength Fruit Juice Beverages, Imitations Thereof, and Drinking Water.

- (a) When packaged in glass, plastic, or fluid milk type paper containers of 8- and 64-fluid-ounce capacity, are exempt from the requirements of 202 CMR 3.07(5)(b) to the extent that net contents of 8 fluid ounces and 64 fluid ounces (or 2 quarts) may be expressed as ½ pint (or half pint) and ½ gallon (or half gallon), respectively.
- (b) When packaged in glass, plastic, or fluid milk type paper containers of 1-pint, 1-quart, and ½-gallon capacities, are exempt from the dual net contents declaration requirements of 202 CMR 3.07(8)(d).
- (c) When packaged in glass or plastic containers of ½-pint, 1-pint, 1-quart, ½-gallon, and 1-gallon capacities, are exempt from the placement requirement of 202 CMR 3.09(1)(a) that the declaration of net contents be located within the bottom 30% of the principal display panel:

*Provided*, that other required label information is conspicuously displayed on the cap or outside closure and the required net quantity of contents declaration is conspicuously blown, formed, or molded into or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.

(11) Soft-Drink Bottles. Bottles of soft drinks shall be exempt from the placement requirements for the declaration of

- (a) identity, when such declaration appears on the bottle closure, and
- (b) quantity, when such declaration is blown, formed, or molded on or above the shoulder of the container and when all other information required by 202 CMR 3.00 appears only on the bottle closure.

(12) Multi-Unit Soft-Drink Packages. Multi-unit packages of soft drinks are exempt from the requirement for a declaration of

- (a) responsibility, when such declaration appears on the individual units and is not obscured by the multi-unit packaging, or when the outside container bears a statement to the effect that such declaration will be found on the individual units inside, and
- (b) identity, when such declaration appears on the individual units and is not obscured by the multi-unit packaging.

(13) Butter. When packaged in 4-ounce, 8-ounce, and 1-pound units with continuous label copy wrapping, butter is exempt from the requirements that the statement of identity 202 CMR 3.04(1) and the net quantity declaration 202 CMR 3.09(1)(e) be generally parallel to the base of the package. When packaged in 8-ounce and 1-pound units, butter is exempt from the requirement for location 202 CMR 3.09(1)(a) of net quantity declaration and, when packaged in 1-pound units, is exempt from the requirement for dual quantity declaration 202 CMR 3.07(8)(c).

(14) Eggs. Cartons containing 12 eggs shall be exempt from the requirement for location 202 CMR 3.09(1)(a) of net quantity declaration. When such cartons are designed to permit division in half, each half shall be exempt from the labeling requirements of 202 CMR 3.00 if the undivided carton conforms to all such requirements.

(15) Flour. Packages of wheat flour packaged in units of 2, 5, 10, 25, 50, and 100 pounds shall be exempt from the requirement in 202 CMR 3.00 for location 202 CMR 3.09(1)(a) of the net quantity declaration and, when packaged in units of two pounds, shall be exempt also from the requirement for a dual quantity declaration 202 CMR 3.07(8)(c).

(16) Small Packages. On a principal display panel of five square inches or less, the declaration of quantity need not appear in the bottom 30% of the principal display panel if that declaration satisfies the other requirements of 202 CMR 3.00.

(17) Decorative Containers. The principal display panel of a cosmetic marketed in a "boudoir-type" container including decorative cosmetic containers of the "cartridge," "pillbox," "compact," or "pencil" variety, and those with a capacity of ¼ ounce or less, may be a tear-away tag or tape affixed to the decorative container and bearing the mandatory label information as required by 202 CMR 3.00.

(18) Combination Packages. Combination packages are exempt from the requirements in 202 CMR 3.00 for (a) Location (see 202 CMR 3.09(1)(a)), (b) Free area (see 202 CMR 3.09(1)(d)), and (c) Minimum Height of Numbers and Letters (see 202 CMR 3.09(2)).

(19) Margarine. Margarine in 1-pound rectangular packages, except for packages containing whipped or soft margarine or packages containing more than four sticks, shall be exempt from the requirement in 202 CMR 3.00 for location (see 202 CMR 3.09(1)(a)) of the net quantity declaration, and shall be exempt from the requirement for a dual quantity declaration (see 202 CMR 3.07(8)(c)).

(20) Corn Flour. Corn flour packaged in conventional 5, 10, 25, 50, and 100-pound bags shall be exempt from the requirement in 202 CMR 3.00 for location (see 202 CMR 3.09(1)(a)) of the net quantity declaration.

(21) Prescription and Insulin-Containing Drugs. Prescription and insulin-containing drugs subject to the provisions of Section 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act shall be exempt from the provisions of 202 CMR 3.00.

(22) Camera Film. Camera film packaged and labeled for retail sale is exempt from the net quantity statement requirements of 202 CMR 3.00 which specify how measurement of commodities should be expressed: Provided, that

(a) The net quantity of contents on packages of movie film and bulk still film is expressed in terms of the number of lineal feet of usable film contained therein.

(b) The net quantity of contents on packages of still film is expressed in terms of the number of exposures the contents will provide. The length and width measurements of the individual

exposures, expressed in millimeters or inches, are authorized as an optional statement.  
Example: "36 exposures, 36 x 24 mm" or "12 exposures, 2¼ x 2¼ in.")

(23) Paints and Kindred Products. Paints, varnishes, lacquers, thinners, removers, oils, resins, and solvents, when packed in 1-liquid-pint and 1-liquid-quart units shall be exempt from the dual quantity declaration requirements of 202 CMR 3.07(8)(d).

(24) Automotive Cooling System Antifreeze. Antifreeze, when packed in 1-liquid-quart units, in metal or plastic containers, shall be exempt from the dual quantity declaration requirements of 202 CMR 3.07(8)(d).

(25) Motor Oils. Motor oils, when packed in 1-liquid-quart units, shall be exempt from the dual quantity declaration requirements of 202 CMR 3.07(8)(d). Additionally, motor oil in 1-liquid-quart, 1-gallon, 1¼-gallon, 2-gallon, and 2½-gallon units, bearing the principal display panel on the body of the container, is exempt from the requirements of 202 CMR 3.04. IDENTITY, to the extent that the SAE grade is required to appear on the principal display panel, provided the SAE grade appears on the can lid and is expressed in letters and numerals in type size of at least ¼ inch.

### 3.13: Variations to be Allowed

#### (1) Packaging Variations.

(a) Variations from Declared Net Quantity. Variations from the declared net weight, measure, or count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages that occur in good packaging practice, but such variations shall not be permitted to such extent that the average of the quantities in the packages of a particular commodity, or a lot of the commodity that is kept, offered, or exposed for sale, or sold, is below the quantity stated, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment, delivery, or lot compensate for such shortage. Variations above the declared quantity shall not be unreasonably large.

(b) Variations Resulting from Exposure. Variations from the declared weight or measure shall be permitted when caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result in change of weight or measure, but only after the commodity is introduced into intrastate commerce:

*Provided*, that the phrase "introduced into intrastate commerce" as used in 202 CMR 3.13(1)(b) shall be construed to define the time and the place at which the first sale and delivery of a package is made within the state, the delivery being either

1. directly to the purchaser or to his agent, or
2. to a common carrier for shipment to the purchaser, and this paragraph shall be construed as requiring that, so long as a shipment, delivery, or lot of packages of a particular commodity remains in the possession or under the control of the packager or the person who introduces the package into intrastate commerce, exposure variations shall not be permitted.

(27) Magnitude of Permitted Variations. The magnitude of variations permitted under 202 CMR 3.13, 3.13(1), 3.13(1)(a), and 3.13(1)(b) shall, in the case of any shipment, delivery, or lot, be determined by the facts in the individual case.



REGULATORY AUTHORITY  
202 CMR 3.00: M.G.L. c. 94, § 182

APPENDIX 3

202 CMR 5.00: UNIT PRICING AND AUTOMATED RETAIL CHECKOUT SYSTEMS

## Section

- 5.01: Definitions
- 5.02: Exemptions
- 5.03: Means of Disclosure
- 5.04: Price Per Measure
- 5.05: Packaged Commodities Regulated and Unit of Measure to be Used
- 5.06: Extension of Time for Compliance
- 5.07: Responsibility for Compliance
- 5.08: Determination of Label Acceptability
- 5.09: Severability Provision
- 5.10: Inspection of Automated Retail Checkout Systems

### 5.01: Definitions

Packaged Commodity means any food, drug, device or cosmetic and any other article, product, or commodity of any kind or class which is customarily necessary or used for personal, family or household use and offered for sale at retail and which is listed in 202 CMR 5.05.

- (a) Unit Price means the price per measure
- (b) Item Price means the total sales price  
For the purpose of enforcing 202 CMR 5.00:
  1. Goods sold in case lots will be considered one whole unit.
  2. Multipacks will be considered one whole unit, provided the items comprising the Multipack, are not sold individually.
  3. Case lot and pallet displays - items contained therein sold individually. All items, unless exempted, must be marked with the retail price. For enforcement purposes, only those items in the layers of cases exposed for sale in the display will have to be price marked.
- (c) Retail Store means any retail outlet including wholesale clubs and membership warehouses that sells or offers for sale any packaged commodity that is listed in 202 CMR 5.01.

### 5.02: Exemptions

Sellers at retail need not comply with the provisions of 202 CMR 5.00 as to the following packaged commodities:

- (1) Medicine sold by prescription only:
- (2) Beverages subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act.
- (3) Such packaged commodities which are required to be marked individually with the cost per unit of weight under the provisions of M.G.L. c. 94, § 181.
- (4) Packaged commodities which are sold in packages containing one or two of the units of measure prescribed in 202 CMR 5.00 and which have an item price plainly marked thereon;

but only the particular packaged commodity in such units shall be exempt. All other items in excess of two multiples of the unit of measure must be unit priced.

(5) Packaged commodities sold by any retail establishment operated by a person as his sole place of business shall be exempt from 202 CMR 5.00 if gross annual sales are less than \$1,000,000.

(6) "Deal Items", such as, Cents Off, Bonus Packs, Percent Off, Half Price, or manufacturer "Pre-Priced" Items, if the same as or lower than regular selling price, provided the unit price is posted as required for "Non Deal" items.

#### 5.03: Means of Disclosure

All retail establishments subject to 202 CMR 5.00 shall disclose the unit price and item price to consumers in the following manner:

- (1) The unit price label, stamp or tag must consist of no more than two dominant segments.
  - (a) The left-hand segment of the label, stamp or tag must be orange: the other part of the label must be primarily white:
    1. Orange shall be defined for purposes of 202 CMR 5.00 as being measured inclusively between the wavelengths of 595 and 620 mill microns (or between 5950 and 6200 angstroms) on a normal color spectrum. For purposes of everyday recognition and operation, only the following identifying numbers for orange, as found in the U.S. Government General Services Administration Federal Standards Publication (Color-card) #595a and change notice 3, revised January 2, 1968, will be considered in compliance with the above specification: #22510, #12473, and #32246.
    2. When a label at any time fails to fall within the color range specified in 202 CMR 5.03(1)(b)1., even though it may be due to the fading of the color, said label shall not be considered in compliance with 202 CMR 5.00.
  - (b) The unit price label, stamp or tag must appear on the item itself or directly under the item on the shelf on which the item is displayed for items which are not specially displayed or stored. The Unit Price label must not in any way be obscured and must be visible at all times.
  - (c) For specially stored or displayed items such as frozen and cold storage commodities, and goods which are marketed on end displays, the unit price label, stamp, or tag shall appear on the shelf or display space contiguous with the area where the item is displayed.
- (2) The orange segment of the label, stamp, or tag must be conspicuously visible to the customer carrying the following data and no other:
  - (a) The words "Unit Price" as a heading directly above the numerical unit price;
  - (b) The unit price expressed in the following manner:
    1. \$X.XX per unit for all commodities whose unit price is \$1.00 or greater.

2. XX.X¢ per unit for all commodities whose unit price is less than \$1.00 but greater than 10¢.
3. X.XX¢ per unit for all commodities whose unit price is 10¢ or less.
4. ¢ Cents, cnts, if expressed in cents.
5. \$, dollars, dols., dlrs., if expressed in dollars.

(c) The applicable "ply" count or thicknesses, for items such as paper products which are manufactured in numbers of folds showing such information.

(3) The primarily white segment of the label, stamp, or tag must carry the following data:

- (a) Item Price.
- (b) The description of the packaged commodity
- (c) The size of the commodity being sold.

Other stocking information may also be included thereon at the option of the retail establishment PROVIDED that said information does not in any way obscure, de-emphasize or confuse the unit price information.

(4) The Unit Price of commodities regulated hereunder shall be displayed in type no smaller than that used for the item price, but in no event shall the unit price appear in size less than inch unless approved by the Director of Standards.

(a) PROVIDED, that when the retail establishment employs display material at or near the point of sale and the item price appears thereon in sizes larger than 3/8 inch, the unit price required hereunder must appear in a size no less than 3/8 inch or 1/4 the size used for the item price, whichever is greater.

(b) PROVIDED FURTHER, that the unit price shall be printed in bold solid figures which must be clear, conspicuous and legible.

(c) EXCEPTIONS: the retail establishment shall not be required to comply with the provisions of 202 CMR 5.03(1) and (2) as to color and (4) as to size of type, where the product or commodity carries an item price and unit price on its package, and where the unit price appears thereon in a size no smaller than that used for the item price, or.

(d) Electronic shelf displays which display unit price, item price and other required information simultaneously, when incorporated in an electronic price scanning system and have been approved for retail use by the Director.

(e) When the display space used for the packaged commodity is inadequate to set forth separate unit and item price legends as required hereunder, or where the retailer believes unit price information may be usefully conveyed to consumers by alternative method, the required disclosures may be set forth on such legends as are

required hereunder on display cards or other material used for the display of prices for such commodities. However any such alternative method must be approved by the Director, as specified in 202 CMR 5.06, prior to being displayed. The display of the unit price in any event shall be conspicuously visible at all times and appear on an orange background. The size of type used for the unit price legend shall be no less than 1/4 the size used for the retail price, or 3/8 inch, whichever is greater.

5.04: Price Per Measure

Unless otherwise specified in 202 CMR 5.05, the unit price shall be expressed as:

- (1) Price per pound for commodities whose net quantity is customarily expressed in units of pounds or
- (2) For purposes of price comparison all semi-viscous commodities of the same generic kind, if packaged in both terms of weight and fluid measure, shall be unit priced by the pound if packaged in terms of weight or by the pint if packaged in terms of fluid measure.
- (3) Price per pint, quart, or gallon for commodities whose net quantity is customarily expressed in units of pints, quarts, gallons or fluid ounces, or a combination thereof.
- (4) Price per 100 feet or 100 square feet, as appropriate, for commodities whose net quantity is customarily expressed in units of feet, inches, square feet or square yards.

5.05: Packaged Commodities Regulated and Unit of Measure to be Used

The following commodities shall be labeled in accordance with 202 CMR 5.05. Each commodity must be unit priced only in the unit of measure listed below, unless otherwise approved by the Director. In addition, the Director may, upon written request of any multi-state retailer, may authorize a different unit of measure to be used for an item or items in order to provide uniformity and compatibility throughout that retailer's multi-state distribution system.

<u>Commodity</u>	<u>Unit of Measure</u>
Aluminum, plastic wraps, and waxed paper	100 square feet
Baby foods	Quarts if sold by fluid measure Pounds if sold by weight
Baby formula concentrate (liquid or powder)	Quarts if liquid Pounds if sold by weight. Label must also have a statement of the total fluid volume concentrate will make <i>i.e.</i> makes 128 fl. oz.
Baking mixes and supplies	Pounds
Bottled and canned beverages	Gallons
Bread and pastry products	Pounds
Candy in sizes greater than three ounces	Pounds
All poultry, fish and meat products including canned, fresh or frozen.	Pounds
Cereals, dry, ready-to-eat	Pounds
Cocoa	Pounds
Coffee - instant and ground	Pounds
Convenience dinners, "one pan" meals	Pounds
Cookies and crackers	Pounds
Dairy products:	Gallons if sold by fluid measure Pounds if sold by weight
Cream, non dairy coffee cream	Pounds if sold by weight Quarts if sold by fluid measure
Sour cream and yogurt	Pounds if sold by weight Quarts if sold by fluid measure
Deodorants solid and liquid	Ounce

Detergent and soaps	Pounds if sold by weight Gallons if sold by fluid measure
Flour	Pounds
Fresh vegetables and produce	May be sold by measure, weight or per each PROVIDED that the total measured quantity, item price and unit price are clearly marked for every item. Individual items sold per each shall be exempt from 202 CMR 5.00.
Frozen dairy products	Gallons if sold by fluid measure Pounds if sold by weight
Frozen foods except dairy products	Pounds
Fruits, vegetables, - canned, jarred, or boxed	Pounds
Fruit Juices	Gallons
Frozen or unfrozen juice concentrate	Pounds if sold by weight Quarts if sold by fluid measure
Grains and Beans	Pounds
Hair conditioners and sprays	Pounds if sold by weight Quarts if sold by fluid measure
Household cleaners, waxes, deodorizers, starches and bleaches	Pounds if sold by weight Gallons if sold by fluid measure
Instant breakfast foods	Pounds
Jellies, jams, preserves, and sandwich spreads	Pounds
Ketchup, mustards, sauces, and condiments (including) pickles and olives	Pounds if sold by weight Pints if sold by fluid measure
Mouthwash	Quarts
Oleomargarine and butter	Pounds



Oils for cooking	Gallons
Pet food, canned and dried and kitty litter	Pounds
Plastic bags	100 count
Powdered mixes	Pounds
Salad dressings including mayonnaise and vinegar	Quarts if sold by fluid measure Pounds if sold by weight
Sanitary paper products, including but not limited to napkins, facial tissues, bathroom tissues paper towels	100 count 100 square feet
Seasonings and spices in sizes greater than 3 oz.	Pounds if sold by weight Pints if sold by fluid measure
Shampoo	Quarts if sold by fluid measure Pounds if sold by weight
Shaving cream	Pounds
Shortenings	Pounds if sold by weight Gallons if sold by fluid measure
Snack foods, including but not limited to potato chips, pretzels, and nuts	Pounds
Soups	Pounds if sold by weight Quarts if sold by fluid measure
Sugar	Pounds
Syrups	Quarts if sold by fluid measure Pounds if sold by weight
Tea	Pounds if sold loose per 100 units if sold as tea bags
Toothpaste	Pounds

#### 5.06: Extension of Time for Compliance

(1) Any retail establishment which is unable to comply with 202 CMR 5.00 within the time set forth herein, may apply to the Director of Standards for permission to extend such time for compliance for a period not to exceed 30 days. Such retail establishment shall set forth, in as much detail as possible, the reasons for its inability to comply. The Director of Standards may extend such period from time to time, upon such terms and conditions as he may deem reasonable.

(2) Exemption from compliance with the requirements of any of the provisions of 202 CMR 5.03 through 5.05 may be granted for cause by the Director of Standards upon the filing of a statement, setting forth the reason for inability to comply with any of the requirements of 202 CMR 5.03 through 5.05. Any such exemption shall be granted by the Director of Standards for such period of time as he may deem reasonable.

#### 5.07: Responsibility for Compliance

In the event of a violation of 202 CMR 5.00, the manager, or individual in charge of such retail establishment, and the individual or corporation employing such manager or individual in charge where applicable shall be deemed to be responsible for compliance by such retail establishment with the requirements of 202 CMR 5.00.

#### 5.08: Determination of Label Acceptability

All unit price labels and alternative display methods as allowed for in 202 CMR 5.03, prior to their display in retail establishments, must be approved by the Director of Standards in order to ensure accord with the stipulations laid out in 202 CMR 5.00. The Director of Standards will render a decision within four weeks of receipt of the label or alternative method of display. In reaching a decision, the Director of Standards shall take into consideration, but will be limited to, the prominence of the unit price segment of the label, the boldness of the figures which must be clearly and conspicuously printed and the overall design of the label.

#### 5.09: Severability Provision

If any section or portion of a section of 202 CMR 5.00, or the applicability thereof to any person or circumstances is held invalid by a court, the remainder of 202 CMR 5.00, or the applicability of such provision to other persons or circumstances, shall not be affected thereby.

#### 5.10: Inspection of Automated Retail Checkout Systems

(1) Scope. The examination procedures set out in 202 CMR 5.10(2) shall be used by the director of the Division of Standards or his inspectors and sealers and inspectors of weights and measures and their deputies for all examinations required by M.G.L. c. 98, § 56D.

(2) Examination Procedures. Pursuant to M.G.L. c. 98, § 56D, the Division of Standards adopts "National Conference on Weights and Measures Publication 19, Examination Procedure for Price Verification October 1996 Edition," as the rules and regulations of the Division of Standards regarding the procedures for examining automated retail checkout systems. The address for the National Conference on Weights and Measures is: 15245 Shady Grove Road, Suite 130, Rockville, MD 20850.

REGULATORY AUTHORITY 202 CMR 5.00: M.G.L. c. 6A, § 115A; c. 98, § 29

APPENDIX 4

202 CMR 6.00 Consumer and Merchant Protection Act

## 202 CMR: DIVISION OF STANDARDS

### 202 CMR 6.00: CONSUMER AND MERCHANT PROTECTION ACT COMMITTEE

#### Section

- 6.01: General Provisions
- 6.02: Minimum Standards and Qualifications
- 6.03: Application for Certification
- 6.04: Examination and Civil Service Certification
- 6.05: Division of Standards Certification of Officials for Additional Disciplines
- 6.06: Grounds for Disciplinary Action
- 6.07: Establishment of Continuing Education Requirements
- 6.08: Standards for Continuing Education
- 6.09: Verification of Continuing Education
- 6.10: Notice to Consumers
- 6.11: Enforcement of Notice Requirements
- 6.12: Advisory Opinions, Alternative Notices, and Waiver

#### 6.01: General Provisions

(1) General Provisions. 202 CMR 6.00 is promulgated pursuant to M.G.L. c. 98, § 29. M.G.L. c. 98, § 29 established the Consumer and Merchant Protection Act Committee and authorized it to promulgate regulations requiring every retail establishment to display information relative to how a local sealer or inspector or the division of standards may be contacted. Also, pursuant to M.G.L. c. 98, § 29, the Committee is authorized to promulgate regulations to certify all inspectors, sealers and deputies in accordance with M.G.L. c. 98, §§ 34, 35 & 36. The Committee shall issue a Certificate of Qualification to any individual upon satisfactory completion of all certification requirements. An applicant for certification must meet the qualifications and satisfactorily pass an examination as determined by the Committee. Upon receipt of a Certificate of Qualification pursuant to 202 CMR 6.00, a Weights and Measures Official shall be certified in accordance with M.G.L. c. 98, §§ 34, 35 and 36.

(2) Scope. 202 CMR 6.00 applies to all Weights and Measures Officials and applicants, and all retail establishments within the jurisdiction of the Division of Standards.

(3) Definitions. Unless otherwise stated, terms used in 202 CMR 6.00 are as defined and used in M.G.L. c. 98, § 1.

Certificate of Qualification, means a certification given by the Committee to Weights and Measures Officials pursuant to M.G.L. c. 98, § 29. A Certificate of Qualification given by the Committee is separate and distinct from a certification for additional weights and measures disciplines given by the Division of Standards, pursuant to 202 CMR 6.05.

Committee, means the Consumer and Merchant Protection Act Committee established by M.G.L. c. 98, § 29.

Disciplinary Action, includes but is not limited to: revocation, suspension, probation, censure, reprimand, restriction, denial/restriction of privileges, resignation or termination of participation.

Mall Building, means a building enclosing a number of tenants and occupancies such as retail stores, drinking and dining establishments, entertainment and amusement facilities, passenger transportation terminals, offices and other similar occupancies wherein two or more tenants have a main entrance into one or more malls.

Retail Establishment, means any store, shop, supermarket, grocer, convenience store, wholesale club, warehouse seller, outlet, food store or food department and any merchant within the jurisdiction of the Division of Standards that sells any item to individuals for their personal, family, or household use.

Sales Area, means the area of a retail establishment that is available or openly displayed to the public. Areas not available to the public, such as storage areas and management office space, shall not be included in the definition of sales area for determining square footage pursuant to 202 CMR 6.00.

Weights and Measures Official, means a sealer, deputy sealer, inspector, or deputy inspector as defined or used in M.G.L. c. 98.

#### 6.02: Minimum Standards and Qualifications

An applicant for a Certificate of Qualification as a Weights and Measures Official must possess the following minimum qualifications in order to be eligible for certification:

- (1) The applicant is 18 years of age or over;
- (2) The applicant has a high school diploma or its equivalent;
- (3) The applicant has achieved a passing grade on the certification examination prescribed by the Committee or has a Civil Service examination exemption; and
- (4) The applicant is of good moral character.

#### 6.03: Application for Certification

- (1) Certification Application. Application for a Certificate of Qualification as a Weights and Measures Official shall be made on a form provided by the Committee. Said application form shall be filled out completely and shall be accompanied by the following:
  - (a) Official transcripts, or other official documentation satisfactory to the Committee, verifying that the applicant meets the educational requirements specified in 202 CMR 6.02;
  - (b) Written documentation satisfactory to the Committee, verifying that the applicant meets the Civil Service exemption specified in 202 CMR 6.02(3), if applicable,
  - (c) An identifying photograph; and
  - (d) Any and all additional documentation which may be requested in writing by the Committee.

- (2) Application Deficiency. Applicants shall be notified in writing of any deficiencies in their applications. If the requested additional information is not received by the Committee within 90 days of the date of the applicant's receipt of that written notice, the application shall no longer be considered for action by the Committee.
- (3) Address Change. It is the responsibility of the applicant or registrant to notify the Committee in writing of any change of address.

#### 6.04: Examination and Civil Service Certification

- (1) Certification Application. An applicant for a Certificate of Qualification as a Weights and Measures Official shall be required to pass an examination as determined by the Committee, which may include, but not be limited to, a written or computerized part to the examination and a performance part to the examination.
- (2) Examination Content. Examinations shall be given at least once a year, and shall be conducted in the English language. The examination shall include such subjects as the Committee may direct. The content of said examination shall be reasonable and appropriate to the duties and functions of a Weights and Measures Official, and shall be sufficiently thorough to test the applicant's fitness to perform those duties and functions. Appropriate modifications may be made for applicants with disabilities or special needs, as determined by the Committee.
- (3) Notice to Appear. Applicants shall be given advance written notice as to when and where to appear for the examination or any part of the examination.
- (4) Applicant Misconduct. Applicants who engage in the conduct described below shall have their examination materials confiscated, shall be denied permission to complete the examination and shall be required to leave the examination site:
  - (a) Removing test materials from the examination room; reproducing in any manner or aiding in the reproduction of test materials; selling, distributing, buying or having unauthorized possession of test materials;
  - (b) Communicating with any other examinee during the exam; copying answers or permitting answers to be copied; having in one's possession, during the examination, any material other than the examination materials; failure to obey instructions to stop working and/or starting the examination prior to being authorized to do so;
  - (c) Falsifying or misrepresenting educational credentials or other information required for admission to the exam; having another person take the exam on one's behalf.
- (5) Mailing of Results. Results of the examination shall be mailed to the applicant.
- (6) Passing Score. The passing score for the examination shall be determined by the Committee.
- (7) Civil Service Certification. The Committee may issue a Certificate of Qualification without examination to any Weights and Measures Official who has passed a civil

service examination for his position. The Committee shall require documentation that the Weights and Measures Official has passed such civil service examination.

#### 6.05: Division of Standards Certification of Officials for Additional Disciplines

(1) Certification for Additional Disciplines. In addition to the receipt of a Certificate of Qualification from the Committee pursuant to 202 CMR 6.00, all Weights and Measures Officials who are required to certify devices or conduct inspections in any of the following weights and measures disciplines shall be certified by the Division of Standards:

- (a) unit pricing, conducted pursuant to M.G.L. c. 6, § 115A;
- (b) item pricing, conducted pursuant to M.G.L. c. 94, § 184C and 184D;
- (c) price verification, conducted pursuant to M.G.L. c. 98, § 56D;
- (d) package and label checking, conducted pursuant to 202 CMR 3.00;
- (e) taximeters, conducted pursuant to M.G.L. c. 98, § 45;
- (f) vehicle tank meters, conducted pursuant to 202 CMR 2.00 and the National Institute of Standards and Technology Handbook 44;
- (g) scales with a capacity greater than 100 pounds; and
- (h) motor fuel sales act compliance, M.G.L. c. 94, § 295(a) through (k).

(2) Grandfather Provision. Persons who are currently employed as Weights and Measures Officials, who have engaged in a discipline listed in 202 CMR 6.05(1) on 5/14/99, and who can demonstrate to the satisfaction of the Division of Standards that they have received proper training in such discipline, shall be certified in such discipline by the Division of Standards within one year from the date of receipt of a Certificate of Qualification from the Committee or three years from 5/14/99, whichever date is later.

(3) Additional Discipline Pre-Qualification. Persons not meeting the criteria set out in 202 CMR 6.05(2) shall be certified by the Division of Standards before engaging in any of the disciplines listed in 202 CMR 6.05(1).

(4) Sanction. Failure of a Weights and Measures Official to be timely certified pursuant to 202CMR 6.05(1), and 202 CMR 6.05(2) or 202 CMR 6.05(3) (whichever may be applicable) shall subject such official to discipline pursuant to 202 CMR 6.06, which shall include, but not be limited to, disqualification from certifying or conducting inspections of any disciplines listed in 202 CMR 6.05(1) in which said official was engaging.

#### 6.06: Grounds for Disciplinary Action

The Committee may, by a majority vote, and after a hearing conducted in accordance with M.G.L. c. 30A and 801 CMR 1.00 *et seq.*, take Disciplinary Action against the Certificate of Qualification or other certification of a certified Weights and Measures Official. Grounds for such Disciplinary Action include, but are not limited to, the following:

- (1) Criminal Conviction. Conviction of any criminal offense related to the practice of his/her profession;
- (2) Fraud in Certification. Obtaining or attempting to obtain a certificate of certification by



fraud, deceit, misrepresentation or the use of false or forged evidence of any kind, including but not limited to falsification of reports of continuing education courses, seminars, workshops or contact hours;

- (3) Incapacity. Lack of fitness to practice by reason of incapacitation due to mental impairment;
- (4) Fraud in Practice. Fraud or deceit in the course of his/her professional practice as a Weights and Measures Official;
- (5) Negligence. Negligence in the performance of his/her professional duties as a Weights and Measures Official;
- (6) Inadequate Continuing Education. Failure to meet the continuing education requirements set out in 202 CMR 6.07, 6.08, and 6.09;
- (7) Practical Examination Failure. Failure to meet any practical examination administered by the Division of Standards or the Committee;
- (8) Practicing without Certification. Practicing in a weights and measures discipline listed in 202 CMR 6.05(1) without certification by the Division of Standards; or
- (9) Misconduct. Any other form of misconduct in the practice of his or her profession.

#### 6.07: Establishment of Continuing Education Requirements

- (1) Required Hours of Continuing Education. A certified Weights and Measures Official shall complete 3.0 continuing education units, or 30 contact hours, of continuing education every two years.
- (2) Attestation Requirement. A certified Weights and Measures Official shall attest under penalty of perjury that he/she has completed the number of continuing education units required by 202 CMR 6.07(1). Such attestation shall be made on a form prescribed and provided by the Committee.
- (3) Extenuating Circumstance Extensions. The Committee may grant an extension of the time for completion of such continuing education to a certified Weights and Measures Official upon submission by the registrant of satisfactory proof of extenuating circumstances.
- (4) Good Faith Extensions. If a particular continuing education activity is undertaken by a certified Weights and Measures Official in good faith, but the continuing education credit for that activity is denied or disapproved by the Committee, the certified Weights and Measures Official so affected shall be given one year from the date of the Committee's decision to correct the deficiency. Verification of completion of an acceptable substitute activity shall be submitted to the Committee within 60 days of its completion.

#### 6.08: Standards for Continuing Education

The following standards are intended to assist a certified Weights and Measures Official in selecting appropriate continuing education activities. The overriding consideration in

determining whether a particular continuing education activity qualifies for credit is whether it is an activity which contributes directly to the professional competence of a certified Weights and Measures Official.

- (1) Acceptable Subject Matter - Appropriate subject matter for continuing education purposes shall include, but shall not be limited to, one or more of the following:
  - (a) unit pricing, conducted pursuant to M.G.L. c. 6, § 115A;
  - (b) item pricing, conducted pursuant to M.G.L. c. 94, § 184C and 184D;
  - (c) price verification, conducted pursuant to M.G.L. c. 98, § 56D;
  - (d) package and label checking, conducted pursuant to 202 CMR 3.00;
  - (e) taximeters, conducted pursuant to M.G.L. c. 98, § 45;
  - (f) vehicle tank meters, conducted pursuant to 202 CMR 2.00 and Handbook 44;
  - (g) scales with a weight capacity greater than 100 pounds;
  - (h) motor fuel sales act, M.G.L. c. 94, § 265(a) through (k);
  - (i) motor fuel dispensers
  - (j) small capacity scales with a weight capacity of 100 pounds or less.
  
- (2) Methods of Obtaining Contact Hours- Continuing education contact hours may be obtained as follows:
  - (a) Through courses or seminars offered, sponsored or endorsed by the Division of Standards for Weights and Measures Officials.
  - (b) Through courses or seminars offered or sponsored by educational institutions or other recognized entities which have relevance to the duties and functions of a Weights and Measures Official, and for which academic credit or continuing education contact hours are granted by that entity. Such courses or seminars shall be taught by faculty who possess adequate knowledge of both the principles of adult education and the particular subject matter being taught.
  - (c) Through programs, workshops or conferences offered or sponsored by a recognized entity. Such programs, workshops or conferences shall be relevant to the duties of a Weights and Measures Official, shall have well defined objectives, and shall be conducted by faculty who possess adequate knowledge of both the principles of adult education and the particular subject matter being taught.
  - (d) By teaching a particular course, conducting a seminar or workshop, delivering a lecture, or publishing an article or book relating to the duties of a Weights and Measures Official, for the first time.
  - (e) Employee orientation or in-service training presentations concerning standard operating procedures specific to the employing agency or entity shall not be accepted for continuing education purposes.
  
- (3) Amount of Credit Earned. The amount of continuing education contact hours to be granted shall be determined as follows:
  - (a) A certified Weights and Measures Official who attends a course or seminar offered, sponsored or endorsed by the Division of Standards shall earn a number of continuing education contact hours equal to the number of contact hours of instruction actually provided;
  - (b) A certified Weights and Measures Official who attends a course or seminar offered or sponsored by an educational institution for which academic credit may be granted shall earn 15 continuing education contact hours for each semester hour of academic credit received, and shall earn eight continuing education contact hours for each semester hour audited;
  - (c) A Certified Weights and Measures Official who attends a course or seminar offered or sponsored by a recognized entity other than an educational institution shall earn a number of

continuing education contact hours equal to the number of contact hours of instruction actually provided;

(d) A Certified Weights and Measures Official who attends a program, workshop, lecture or conference offered or sponsored by any recognized entity shall earn a number of continuing education contact hours equal to the number of contact hours of instruction or lecture actually provided;

(e) A Certified Weights and Measures Official who teaches a particular course or seminar, conducts a workshop, or delivers a lecture shall be given a number of continuing education contact hours equal to the number of contact hours of instruction or lecture actually provided;

(f) A Certified Weights and Measures Official who publishes a book, article, chapter, or brochure relating to weights and measures for the first time shall earn nine continuing education contact hours for publishing a book; five continuing education contact hours for publishing a chapter of a book, or for publishing an article in a scientific or technical journal; and one continuing education contact hour for publishing an article in a newsletter published by a recognized entity.

#### 6.09: Verification of Continuing Education

(1) Committee Information Requests. Upon written request by the Committee, a certified Weights and Measures Official shall furnish to the Committee such information as the Committee may require about any course, program, lecture, workshop, conference, book, article or other publication for which that certified Weights and Measures Official claims continuing education credit. Such information shall be submitted on a form prescribed and provided by the Committee, and shall include, but shall not necessarily be limited to, the information required by 202 CMR 6.09(2) or (3), whichever applies.

(2) Verification Documents. A certified Weights and Measures Official who is requested to submit verification of a qualifying course, program, lecture, workshop or conference shall submit a written statement (or photocopy) which shall include the following information:

- (a) The name of the recognized entity which conducted or sponsored the course, program, lecture, workshop or conference;
- (b) The location of the course, program, lecture, workshop or conference;
- (c) The title and authorized number of the course, program, lecture, workshop or conference;
- (d) The date or dates of attendance;
- (e) The copy of any certificate issued in relation to any course, program, lecture, workshop, or conference;
- (f) The number of contact hours completed;
- (g) The name and signature of the registrant;
- (h) The name and signature of an authorized representative of the recognized entity providing or sponsoring the activity; and
- (i) Such other information as the Committee may reasonably require.

(3) Article or Book Documentation. A certified Weights and Measures Official requested to submit verification of published articles or books for which continuing education credit is sought shall submit the following information:

- (a) The title of the book, chapter or article and, in the case of a chapter or article, the title of the book or name of the journal or newsletter in which it appears;
- (b) The date of publication; and
- (c) The names of any co-authors.

The Committee may require a certified Weights and Measures Official to provide a copy of the actual book, chapter, brochure or article for which continuing education credit is claimed.

(4) Recognition of Continuing Education Entities. The Committee shall not grant "recognized entity" status to any educational institution, professional organization or other entity, or grant continuing education credit for courses, programs, lectures, workshops or conferences conducted or sponsored by such an entity, unless that entity maintains written records pertaining to each such continuing education activity for a period of four years from the date the course, program, lecture, workshop or conference is conducted. Such records must be adequate to permit verification of any information submitted by a Certified Weights and Measures Official pursuant to 202 CMR 6.09(2).

6.10: Notice to Consumers

(1) Display Requirements - Stores of 3000 Square Feet or More of Sales Area. Every retail establishment that has a Sales Area of 3,000 square feet or more shall display a consumer notice on how a consumer may contact the Division of Standards or a local weights and measures official. Such notice shall be as follows:

(a) Layout. The notice shall be 8½" wide by 11" long.

(b) Content. Subject to the exception set out in 202 CMR 6.10(1)(d), the notice shall contain the following information, in the form, color and size lettering as Consumer and Merchant Protection Act Committee Form 1, available at the Division of Standards, One Ashburton Street, Room 1115, Boston, MA 02108:

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION  
DIVISION OF STANDARDS  
IMPORTANT CONSUMER NOTICE!  
DO YOU HAVE A PRICE ACCURACY QUESTION  
OR A QUESTION REGARDING  
SCANNER OVERCHARGE  
UNIT PRICING  
INSUFFICIENT WEIGHT OR MEASURE  
OR  
WEIGHTS AND MEASURES ISSUES?  
PLEASE CONTACT  
THE DIVISION OF STANDARDS  
ONE ASHBURTON PLACE  
BOSTON, MA 02108  
CALL 617-727-3480  
FAX 617-727-5705  
OR E-MAIL  
standards.mail@massmail.state.ma.us

(c) Display Area.

1. The notice shall be posted in a clear and conspicuous place in each retail establishment at each customer service area.
2. If a retail store does not have a customer service area, the notice shall be posted in a clear and conspicuous place at each store exit.
3. If a retail store is located within a mall building, the notice shall be posted at every mall building exit. This posting requirement for retail stores in a mall building shall substitute for any notice otherwise required by 202 CMR 6.10(1) and (2).
4. Nothing shall obstruct the view to consumers of any notice required by 202 CMR 6.00.

(d) Local Jurisdiction Exception.

1. Upon the approval of the Director, a local Weights and Measures Official may require all retail stores within the official's approved jurisdiction to display a substitute notice containing all the information specified under 202 CMR 6.10(2)(b) except for the contact information, which shall be replaced by the contact information of the local Weights and Measures Official.

2. Upon said approval, such local weights and measures official shall provide an alternate form meeting the requirements of 202 CMR 6.10(2)(a) to all retail stores in its approved jurisdiction.

(2) Display Requirements - Stores Under 3000 Square Feet.

(a) Every retail establishment which has an area of less than 3,000 square feet shall display a consumer notice on each weighing and measuring device in a form approved by the Division of Standards.

(b) If any retail establishment which has an area of less than 3,000 square feet does not use any weighing or measuring devices, the retail establishment must post a consumer notice in accordance with the requirements of 202 CMR 6.10(1).

6.11: Enforcement of Notice Requirement

(1) Fines. Any retail store that fails to comply with the provisions of 202 CMR 6.10 are subject to a fine not exceeding, for the first offense, \$100 and, for the second or subsequent offense, a fine not exceeding \$500, or shall be subject to a civil citation as provided in M.G.L. c. 98, §29A.

(2) Mall Building Fines. Each retail establishment in a mall building may be fined for any mall building which is not in compliance with the notice requirements set out in 202 CMR 6.10(1)(c)3.

6.12: Advisory Opinions, Alternative Notices, and Waiver

(1) Advisory Opinions. The Division of Standards may, in its sole discretion, issue advisory opinions regarding issues arising during the enforcement of 202 CMR 6.00.

(2) Alternative Notices and Waiver Authority. The Division of Standards may, in its sole discretion, allow a retail establishment to use an alternative method of providing the required consumer notice information and may waive any of 202 CMR 6.00, if such alternative method or waiver would be in the public interest and serve to carry out the purpose or intent of 202 CMR 6.00 and M.G.L. c. 98.

**REGULATORY AUTHORITY**

202 CMR 6.00: M.G.L. c. 98, § 29.

APPENDIX 5  
202 CMR 7.00: PRICE DISCLOSURE

## DIVISION OF STANDARDS

### 202 CMR 7.00: PRICE DISCLOSURE

#### Section

- 7.01: Purpose and Authority
- 7.02: Definitions
- 7.03: Individual Item Pricing
- 7.04: Waiver
- 7.05: Scanner Specifications
- 7.06: Consumer Price Scanner System Pricing Disclosures
- 7.07: Lowest Price Requirements
- 7.08: Sales Receipts
- 7.09: Consumer Rights Disclosures
- 7.10: Inspections; Violations; Penalties; Appeals
- 7.11: Retail Checkout Systems, All Massachusetts Retailers

#### 7.01: Purpose and Authority

202 CMR 7.00 is promulgated pursuant to St. 2012, c. 138, *An Act Relative to Clear and Conspicuous Price Disclosure* and St. 2013, c. 38, §§ 82 through 85. The purpose of 202 CMR

7.00 is to clarify and implement statutory amendments to M.G.L. c. 94, §§ 184B through 184E, and M.G.L. c. 98, § 56D, and to establish standards for price disclosure in food stores and food departments and the process for waiver from individual item pricing in food stores or food departments utilizing a consumer price scanner system.

The provisions of 202 CMR 7.00 are severable, and should any provision be declared invalid, such invalidity shall not affect other provisions of 202 CMR 7.00.

#### 7.02: Definitions

Advertised Price means the price of an item published or disclosed in any circular, newspaper, magazine, television or radio commercial, or in any other medium, or any published correction thereof.

Automated Checkout System means a cash register, computer terminal, or other device capable of determining the price of an item from the item's code after searching the electronic price database and printing an itemized sales receipt for a customer.

Card Price means the price a loyalty card holder will be charged if different from the non-card price.

Checkout Price means the price of an item to be charged to the consumer whether purchased or not as listed on an automated checkout system display or an itemized sales receipt.

Clear and Conspicuous means that the matter being disclosed is of such size and color contrast and so placed as to be legible and readily noticed by the purchaser or prospective purchaser.

Code means an identifier of an item including, without limitation, symbols, letters, numbers, bars or combinations thereof.

Consumer Price Scanner means an electronic scanner provided for consumer use that is capable of reading an item's code and displaying a description of the item and its correct price after searching the electronic price database.

Correct Price means the advertised price in any circular, newspaper, magazine, television or radio commercial, or in any other medium, or any published correction thereof. If an item is not advertised, the correct price shall be the lowest display price indicated on any store sign for the item, but not if the checkout price is lower. If an item has no display price, the correct price shall be the price of the item on its unit price label, but not if such item is rung up at a lower price. If no unit price label is displayed the correct price shall be the price rung up by the food stores or a food departments automated checkout system. If the foregoing provisions for establishing the correct price are not determinative in a particular situation, the correct price shall be the price on the seller's current price list.

Director or Deputy Director means the deputy director of the division of standards established pursuant to M.G.L. c. 24A, § 5, or the director's designee, including an inspector, a sealer, or a deputy as defined in M.G.L. c. 98, § 1.

Discount means a percentage off or a special price reflected in the checkout price and indicated on the itemized sales receipt.

Display Price means the price on a sign or label affixed to a display, table, shelf or other surface upon which the unit is placed.

Division means the Division of Standards established pursuant to M.G.L. c. 24A, § 5.

Dual Pricing System means a separate pricing system that allows for one correct price for non-loyalty cardholders and one correct price for loyalty card holders.

Food means anything edible.

Food Department means any seller, other than a warehouse club or a food store, with any grocery item section, area, or display and which sells 100 or more different food items for consumption off the seller's premises at least in part to individuals for their own personal, family, or household use; provided, however, that any food section which is within a larger business and is the functional equivalent of a food store with its own separate checkout, may be deemed a food store by the Division of Standards.

Food Store means any store, shop, supermarket, grocer, convenience store, or other seller, whose primary business is selling either food for consumption off the seller's premises alone or in combination with grocery items or other nondurable items typically found in a supermarket, and such items are sold at least in part to individuals for their own personal, family, or household use. A food store shall not include a warehouse club.



Grocery Item means any food, pet food or supply, soap, household cleaner of any type, laundry product, light bulbs, or disposable paper or plastic products.

Immediate or Immediately as used in 202 CMR 7.00, means as soon as is practicable, but in no event more than two hours after notification.

Individual Item means one of an item, to be used interchangeably with unit.

Item means a specific and distinct product, good or commodity available for sale having a different universal product code or SKU for other items so coded, and for items not so coded, an item having any distinguishing characteristics compared to another item.

Itemized Sales Receipt means a printed and dated sales receipt, or at the option of the consumer, if available, an electronically delivered sales receipt listing, at a minimum, the price charged to the consumer for each item and the quantity sold.

Loyalty Card means a card or other device issued that confers certain benefits to cardholders, including discount prices upon presentation of the card. A loyalty card shall not include membership cards issued by warehouse retailers. For purposes of price signs for dual pricing, a loyalty card shall not include a store card which provides the consumer with an overall discount on an entire order of goods.

Price List means an easily referenced list that indicates the code, the description and the current correct price of each item excluded under M.G.L. c. 94, § 184C(e). (Note change from reference in statute to M.G.L. c. 94, § 184C(c)).

Scanner Price means the price of an item as displayed on a consumer price scanner.

Seasonal Employment means services performed for wages for a seasonal employer during the seasonal period in the employer's seasonal operations, after the effective date of a seasonal determination with respect to a seasonal employer.

SKU means the stock-keeping unit, number or code used to identify each unique product or item for sale in a food store or food department.

Sticker Price means the price on a sticker, ticket, tag or other label affixed to an individual item.

Warehouse Club means a retail store in which customers pay annual membership fees in order to purchase items at member-only prices.

### 7.03: Individual Item Pricing

(1) The correct price of an item offered for sale by a food store or food department shall be disclosed to consumers in a clear and conspicuous manner. For those food stores and food departments utilizing an individual item pricing system:

(a) Prices for the same item shall be consistent with each other and the correct price;

- (b) The correct price shall be affixed to each unit or item in a clear and conspicuous manner by means of a sticker;
- (c) The correct display price shelf tag, which shall be not less than one inch high for each separate SKU or separately-coded item that is exempt from item pricing, must be posted in close proximity to the item(s) offered for sale; and
- (d) The numbers indicating the price of the item on the display price shelf tag shall be at least ½" high.

(2) In the case of a food store or food department utilizing an individual pricing system which utilizes loyalty cards or otherwise maintains a dual pricing system:

- (a) The non-card price shall be affixed to the item if it differs from the loyalty card price;
- (b) A clear and conspicuous sign at the point of display must include both the loyalty card price and the non-loyalty card price so labeled if they differ, each such price shelf tag not less than one inch high, for any such items that are exempt, as well as the savings per unit, listed either as an amount or as the percentage of savings per unit;
- (c) The numbers indicating the price of the item on the display price shelf tag shall be at least ½" high.

(3) Exemptions From Individual Item Pricing for Food Stores or Food Departments Utilizing Individual Item Pricing. Upon a determination by the Division that:

- (a) A clear and conspicuous sign disclosing the item's code, its description and its correct display price shelf tag, not less than one inch high, for each separate SKU or separately coded item that is exempt is posted in close proximity to the item(s) offered for sale;
- (b) The numbers indicating the price(s) of the item on the display price shelf tag are at least ½" high;
- (c) The cashier can readily discern the item's correct price;
- (d) The food store or food department maintains a price list for all exempted items; and
- (e) The price list is available in written format at each checkout and can be reviewed by a customer upon request, or, in the alternative, is available either in written format or electronically at one or more customer-accessible locations at the food store or food department's service desk and a sign is conspicuously posted at eye level and above eye level identifying the location of the price list, the food store or food department may exempt the following classes of items from its individual pricing system:
  1. Unpackaged: produce, meat, fish, poultry, delicatessen, bakery items, and any other items that are unpackaged and offered from a bulk display, provided, however, that any such item weighed or wrapped to order by a food store or food department but paid for at a place other than at the point of such weighing or wrapping shall have the correct price marked on the item immediately upon its being weighed and/or wrapped;
  2. Gallons and half-gallons of milk;
  3. Eggs;
  4. Cigarettes, cigars, tobacco and tobacco products;
  5. Individual items within a multi-item package, as long as the package is marked with the correct price;
  6. Cakes, gum, candy, chips, nuts and other snack foods, if offered for sale individually, and located at the checkout area;
  7. Individual greeting cards, if marked with a price code readily understandable by the consumer;
  8. Individual containers of baby food of the same brand and price where vegetable or fruit is the predominant ingredient other than water, but not including juices;
  9. Carbonated non-alcoholic soft drink bottles and cans;
  10. Frozen food products;

11. Items sold by length, area, weight or volume, including, without limitation, chain, rope, flooring, lumber, fabric, stone or soil, that are unpackaged;
12. Items that must be retrieved for the consumer by store staff, including without limitation large electronics or appliances, or display or representative items or items displayed in a locked case or out of reach of consumers;
13. Packaged self-service items that are small in size and offered for sale in a display located at the checkout area;
14. Live animals;
15. Items sold in a coin operated vending machine; and
16. Not more than 60 additional items that are accessible to the consumer in a free-standing or end-aisle display that has at least 50 units of the same item.
17. Provided, however, that unless the deputy director determines otherwise, individual items that differ only by color, flavor or scent shall be counted as the same item if they are identical in all other aspects, including price, size, and brand.
18. Additional items, the exact number of which shall be based on the number of operable cash registers located at the main checkout location and whether the entity exempting such items is a food store or a food department. These additional exemptions shall be granted provided that:
  - a. The food store or food department maintains an automated checkout system that has been determined to be at least 95% accurate during a price accuracy inspection conducted by the division or the division's designee;
  - b. The food store or food department maintains a dated, written price list of the items it has chosen to exempt under this section;
  - c. The price list includes a clear description of each item and the code number understood by the seller's automated checkout system for each item to be exempted;
  - d. The list is maintained so that any item may be referenced easily by a consumer;
  - e. Deletions from the list may be made at any time, but additions, substitutions, or changes may not be made to the list except twice a year, in January and July;
  - f. No seller may exempt items required to be price-marked by other laws or regulations governing specific types of items;
  - g. Items not on the list may not be exempted from item pricing, and no exemptions shall apply unless the exempted items price list has been established and is available on request to any consumer or any representative authorized by the deputy director;
  - h. The dated, written price list is available in written format at each checkout and can be reviewed by a customer upon request, or, in the alternative, is available either in written format or electronically at one or more customer-accessible locations at the food store or food department's service desk and a sign is conspicuously posted at eye level and above eye level identifying the location of the price list; and
  - i. No seller may exempt more than 200 items in any one department, except a grocery department:
    - i. Food stores with one operable cash register shall be allowed to exempt 20 additional items of their own choosing;
    - ii. Food stores with two operable cash registers shall be allowed to exempt 50 additional items of their choosing;
    - iii. Food stores with three to four operable cash registers shall be allowed to exempt 100 additional items of their choosing;
    - iv. Food stores with five to six operable cash registers shall be allowed to exempt 200 additional items of their choosing;
    - v. Food stores with seven or more operable cash registers may exempt up to 400 additional items of their choosing.

vi. In the case of a food department, the number of items exempted pursuant to 202 CMR 7.03(3)(d)18. shall be reduced by 75%. In no case shall the number of exemptions permitted pursuant to 202 CMR 7.03(3)(d)18. exceed 4.5% of the number of packaged grocery items carried by the seller.

#### 7.04: Waiver

- (1) Each food store or food department seeking to convert from an individual item pricing system to a consumer price scanner system shall seek a waiver from the Division, on a form to be provided by the Division.
- (2) The waiver shall be granted, provided that the food store or food department has no outstanding fines under M.G.L. c. 94, §§ 184B through 184D or M.G.L. c. 98, § 56D, and pays the required fee to the Division, which shall be:
  - (a) \$250 annually if the retail grocery item sales space is less than 15,000 square feet;
  - (b) \$500 annually if the retail grocery item sales space is greater than or equal to 15,000 square feet but less than 30,000 square feet; or
  - (c) \$1,000 annually if the retail grocery item sales space is 30,000 square feet or more.
- (3) The food store or food department completes and files with its application a "no job loss" affidavit, which shall include:
  - (a) The number of people employed in the food store or food department at the time of the application process;
  - (b) The terms of a complaint process available through the food store or food department to ensure that full and part-time employees do not suffer any wage or benefit loss due to the transfer from an individual item pricing system to a consumer price scanner system.
- (4) The food store or food department includes with its application additional information required by the Division, including a schematic map of proposed locations for consumer price scanners throughout the food store or food department.
- (5) Any food store or food department with more than 5,000 square feet of retail grocery item sales space that converts from an individual item pricing system to a consumer price scanner system shall within three months of such conversion hire or maintain not less than two employees whose responsibilities shall include the maintenance of all consumer price scanners within the food store or food department. Such maintenance shall include:
  - (a) At a minimum, daily checks of each consumer price scanner in the food store or food department to ensure that each such scanner is plugged in and operating correctly, including conducting a test scan of at least one item for each scanner to ensure that the scanner is operational;
  - (b) Maintaining data log entries to record any and all repair requests for out-of-order scanners;
  - (c) Placing signs on out-of-order scanners until they have been repaired, that include information re-directing consumers to the nearest operational scanner;
  - (d) Replenishing as needed materials used to provide individual pricing tags and the materials providing the means of affixing or attaching scanner-produced pricing information for printing scanners;
  - (e) Ensuring that inoperable or malfunctioning scanners are repaired or replaced within 72 hours of notification of malfunction or inoperability;
  - (f) Ensuring that shelf tags for merchandise are current and correct;
  - (g) Maintaining data log entries for price discrepancies as outlined in 202 CMR 7.07(6).

#### 7.05: Scanner Specifications

- (1) Each food store or food department with more than 5,000 square feet of retail grocery item sales space that utilizes a consumer price scanner system shall have at least one fully operational

consumer price scanner for every 5,000 square feet of retail grocery item sales space or part thereof.

(2) The location of a consumer price scanner shall be disclosed by one clear and conspicuous price sign at eye level, and one clear and conspicuous sign above eye level.

(3) Consumer price scanners shall be equally spaced throughout the store in fixed locations.

(4) All consumer price scanners shall comply with 28 CFR Part 36, Appendix A: *Americans with Disabilities Act Accessibility Guidelines* and 521 CMR 7.00: *Retail Establishments*.

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(5) A sign shall be posted by each consumer price scanner containing contact information for the Division of Standards so that consumers may report non-operating or otherwise defective consumer price scanners to the Division.

(6) Inoperable scanners shall be repaired or replaced as soon as is practicable, but in no event shall scanners go unrepaired or unreplaced for longer than 72 hours.

(7) A food store or food department with more than 5,000 and less than 20,000 square feet of retail grocery item sales space shall have at least one fully operational consumer price scanner capable of producing an individual item pricing tag, located at the front of the food store or food department.

(8) A food store or food department with more than 20,000 square feet of retail grocery item sales space shall provide at least two such fully operational printing scanners, with at least one located at the front of the food store or food department.

(9) At all such printing scanner locations, the food store or food department shall provide the consumer with a means by which such pricing tag may be affixed or appended to the item or its packaging, such as tape or an adhesive pricing tag.

(10) Consumer price scanners shall be deemed fully operational if:

(a) The consumer price scanner clearly and conspicuously identifies and displays the item by name or other distinguishing characteristics;

(b) The consumer price scanner displays the item's correct price when the item is scanned;

(c) In the case of a food store or food department that uses loyalty cards or otherwise maintains a dual pricing system, the consumer price scanner displays both the loyalty card price and the non-card price if they differ; and

(d) For scanners capable of producing an individual item pricing tag, the food store or food department provides the consumer with a means by which such pricing tag may be appended to the item or its packaging, such as tape or an adhesive price tag.

(11) Upon the review and approval of the Deputy Director, food stores or food departments may also deploy new technologies which further the intent of this section, including, but not limited to, hand held or shopping cart-attached scanners that retain in memory and itemize all scanned items. Such technologies may reduce the required number of consumer price scanners by no more than 50%. In order to reduce the otherwise required number of consumer price scanners, food stores or food departments must deploy such alternative scanner instruments at a ratio of five to one, that is, the equivalent of five scanner instruments per 5,000 square feet of retail selling space, or at a rate of one such scanner instrument for 1,000 square feet of retail selling space.

#### 7.06: Consumer Price Scanner System Pricing Disclosures

- (1) A food store or food department that implements a consumer price scanner system shall have the code of an item affixed to each individual unit by means of a sticker, ticket, tag or other label that can be read by the consumer price scanner and automated checkout system, to display the correct price;
- (2) All prices represented to the consumer for the same item shall be consistent with each other and the correct price;
- (3) The item's code, its description and its correct price must be clearly and conspicuously posted in close proximity to the item(s) offered for sale, with the correct display price shelf tag not less than one inch high. The item's description shall be unabbreviated unless, in locations where shelf space is limited for that particular item, a shortened, comprehensible version to be substituted by the seller is readily understandable by the average shopper; and
- (4) The numbers indicating the price of the item on the shelf tag shall be at least ½" high.
- (5) A food store or food department that implements a consumer price scanner system and utilizes loyalty cards or otherwise maintains a dual pricing system shall post a sign at the point of display that includes both the loyalty card price and the non-loyalty card price, each such display price shelf tag not less than one inch high, so labeled if they differ, as well as the savings per unit, listed either as an amount or as the percentage of savings per unit; and
- (6) The numbers indicating the price(s) of the item on the shelf tag shall be at least ½" high.
- (7) Exemptions From Price Display. Upon a determination by the Division that:
  - (a) A clear and conspicuous sign disclosing the item's SKU or code, unabbreviated description or the shortened, comprehensive version described in 202 CMR 7.06(3), and the correct price, which display price shelf tag is not less than one inch high, is posted in close proximity to the item(s) offered for sale;
  - (b) The numbers indicating the price of the item on the shelf tag are at least ½" high;
  - (c) The cashier can readily discern the item's correct price;
  - (d) The food store or food department maintains an itemized list for all exempted items; and
  - (e) The list is available at each checkout, or, in the alternative, is available either in written format or electronically at one or more customer-accessible locations at the food store or food department's service desk and a sign is conspicuously posted at eye level and above eye level identifying the location of the price list, the food store or food department may exempt the following items from displaying the correct price at its consumer price scanners:
    1. Unpackaged and uncoded items to which a price sticker cannot reasonably be affixed; and
    2. Loose produce with SKU numbers.
  - (f) Prior to their display, the Director of Standards must approve any deviation from the requirement of clear and conspicuous signs disclosing an item's unabbreviated description and its correct price not less than ½ inch high. The Director will render a decision within four weeks of receipt of the label or alternative method of display. This exemption shall apply solely to the use of an understandable abbreviation of item description or price size in locations where shelf space devoted to the item is limited,

such as in spice display locations. In reaching a decision, the Director of Standards shall take into consideration the prominence of the price segment of the label, the boldness and size of the characters, and the overall design of the label.

**7.07: Lowest Price Requirements**

- (1) If there is a discrepancy between the advertised price, the sticker price, the scanner price, or the display price and the checkout price on any grocery item, a food store or food department shall charge a consumer the lowest price, regardless of the pricing system employed by the food store or food department.
- (2) In the case of food stores or food departments utilizing a consumer price scanner system, if the checkout price or scanner price is not the lowest price or does not reflect any qualifying discount, the seller:
  - (a) Shall not charge the consumer for one unit of the grocery item, if the price is \$10 or less;
  - (b) Shall charge the consumer the lowest price less \$10 for one unit of the grocery item, if the lowest price is more than \$10; and
  - (c) Shall charge the consumer the lowest price for any additional units of the grocery item.
- (3) 202 CMR 7.07(2) shall not apply if:
  - (a) There is evidence of willful tampering, which shall include, but not be limited to: removing or moving price display signs, or deliberately disabling a consumer price scanner.
  - (b) The discrepancy is a gross error, in that the lowest price is less than half of the checkout price and the seller, in the previous 30 days, did not intend to sell the grocery item at the lowest price.
  - (c) A consumer seeks multiple discounts at any food store or food department after his or her initial grocery item purchases on the same items within 24 hours. Contested matters may first be brought to the attention of the store manager, and if not thereby resolved, may be filed as a consumer complaint with the Division of Standards and/or the Office of the Attorney General.
- (4) All food stores and food departments that use a consumer price scanner shall clearly and conspicuously post the provisions of 202 CMR 7.07(2) at each register.
- (5) For each register that fails to display appropriate signage, the food store or food department shall be subject to a fine of \$200, up to a maximum of \$500 per inspection by the deputy director.
- (6) All food stores and food departments, regardless of the pricing system utilized, shall maintain data on price discrepancies, which shall be provided to the division upon request.
  - (a) The data shall be recorded on a daily log, either in paper or electronic format, signed, initialed or otherwise acknowledged by an identifier traceable to the specific employee who enters the data;
  - (b) The log shall reference the time and date of the discrepancy, the name and brand of the item and the SKU or UPS code of the item, the price charged, the price differential, the steps taken to rectify the pricing error, and the time elapsed from discovery of the error to time it is corrected; and
  - (c) For those errors in a food store or food department using consumer price scanners which result in providing the consumer with a free item, a discounted item, and/or

additional units provided to the consumer at the correct price, the log should also reflect the quantities of free or discounted items provided.

#### 7.08: Sales Receipts

- (1) Items purchased at a food store or food department shall appear on an itemized sales receipt that shall be provided to the consumer, regardless of whether the food store or food department utilizes individual item pricing or a consumer price scanner system.
- (2) If the consumer purchases a sale item or qualifies for a discount, including discounts granted for presenting a loyalty card, the amount saved shall be reflected in the checkout price charged. If the consumer purchases an item that qualifies for a discount granted for presenting a loyalty card, the amount saved shall both be reflected in the checkout price charged and separately listed on the consumer's itemized sales receipt.

#### 7.09: Consumer Rights Disclosures

- (1) All food stores and food departments shall post a sign providing consumers with contact information for the Division of Standards, and notice of the rights provided in M.G.L. c. 94, §§ 184B through 184E;
- (2) All food stores and food departments using consumer scanners shall post a notice at each register of the rights provided under 202 CMR 7.07;
- (3) All food stores and food departments using consumer scanners shall post a notice by each consumer scanner containing the contact information for the Division of Standards;
- (4) The Division of Standards will make available on its website its approved notices. Any deviation therefrom must be approved by the Director of Standards prior to its posting;
- (5) The Division of Standards will also make available a consumer complaint form on its website for consumers who wish to file a complaint regarding pricing accuracy, scanner overcharging, missing price signs or malfunctioning in aisle scanners for use by consumers.

#### 7.10: Inspections; Violations; Penalties; Appeals

- (1) The Deputy Director or the Deputy Director's inspectors and sealers of weights and measures and those deputies, as defined in M.G.L. c. 98, § 1, shall inspect each food store or food department for compliance with M.G.L. c. 94, §§ 184B through 184E.
- (2) The inspections shall be conducted pursuant to the national industry standards adopted by the National Conference on Weights and Measures of the National Institute of Standards and Technology, or any other rules or guidelines promulgated by the Division pertaining to the implementation and enforcement of M.G.L. c. 94, §§ 184B through 184E.
- (3) Nothing shall inhibit the oversampling of sale items during inspections.
- (4) A food store or food department shall provide the inspector with access necessary to conduct an inspection.



(5) The Deputy Director shall notify the food store or food department in writing of violations of 202 CMR 7.10 and of any fines imposed pursuant to M.G.L. c. 94, §§ 184B through 184E.

(6) Violations of M.G.L. c. 94, §§ 184B through 184E for which fines shall be levied include, but shall not be limited to:

- (a) Having no price marked on a unit that is required to be price and is not exempted;
- (b) Having an incorrect price on a unit;
- (c) Having an incorrect or missing sign;
- (d) Overcharging on a Unit. A unit shall be deemed to be overcharged once it is rung up at a price higher than any represented price. As in "checkout price," the price shall be the price displayed on an automated checkout system or an itemized sales receipt, regardless of whether the item is purchased or not.

(7) Notwithstanding the method for determining the amount of civil fines under M.G.L. c. 98, § 29A, a civil citation may be issued for \$200 for each violation, up to a maximum of \$5,000 per inspection, for a food store or a food department utilizing a consumer price scanner system. Notwithstanding the method for determining the amount of civil fines under M.G.L. c. 98, § 29A, a civil citation may be issued for \$100 per violation, up to a maximum of \$2,500 per inspection, for a food store or food department utilizing an individual pricing system.

(8) For purposes of 202 CMR 7.10, each occasion that an item scans erroneously during an inspector's attempt to verify its correct price shall constitute a separate civil violation. Inspectors shall not scan any identical individual item more than once per inspection. The seller shall immediately correct all violations.

(9) For a food store or a food department utilizing a consumer price scanner system, if an item is advertised either in a food store, food department or in a circular as on sale or discounted because of a loyalty card price and the item registers at a higher price at the checkout counter than indicated by a sale or loyalty card price, a civil citation shall be issued for \$300 for each violation, up to a maximum of \$5,000 per inspection. Said loyalty card violations shall be calculated separately from other pricing violations for purposes of the \$5,000 caps.

(10) The Deputy Director shall not issue a fine under M.G.L. c. 94, §§ 184B through 184E and M.G.L. c. 98, § 56D for the same violation.

(11) A fine imposed by the Deputy Director shall be paid within 21 days of issuance of the notice, unless the seller appeals pursuant to the civil citation process found in M.G.L. c. 98, § 29A.

(12) The food store or food department shall immediately correct any noncompliance with M.G.L. c. 94, §§ 184B through 184E when notified by the inspector.

(13) No food store or food department shall be inspected more than once a month, unless such inspection is intended to verify the correction of violations found during a recent inspection or to verify the validity of a specific consumer complaint.

(14) All food stores or food departments subject to M.G.L. c. 94, §§ 184B through 184E shall provide, upon request, a complaint form for a consumer to complete and submit. A consumer may submit a complaint to the Deputy Director and/or the Attorney General regarding noncompliance with M.G.L. c. 94, §§ 184B through 184E. Consumer complaints submitted to the Deputy Director shall be investigated. In the case of any verified consumer complaint, fines for overcharging shall be limited to one violation per item. A fine shall be issued upon verification of any consumer complaint alleging overcharging or improper price marking.

(15) If the Deputy Director determines that a food store or food department is either intentionally or through gross negligence violating any provisions of M.G.L. c. 94, §§ 184B through 184E, the Deputy Director shall provide written notice of such determination to the food store or food department and the food store or food department shall have 30 days to cure these violations. Provided, however, that pricing violations shall be corrected immediately upon notice. If upon re-inspection the Deputy Director determines that the food store or food department is still not in substantial compliance with 202 CMR 7.00 and M.G.L. c. 194, §§ 184B through 184E, all of the food store's or food department's exemptions shall be rescinded for a period of 12 months, and the matter shall be referred to the Attorney General for action against that food store or food department.

(16) M.G.L. c. 94, §§ 184B through 184E shall only apply to food stores and to grocery items in food departments. M.G.L. c. 94, §§ 184B through 184E shall not diminish any obligations under other laws or regulations regarding item pricing for sellers other than food stores or for items other than grocery items in food departments. If a seller is also subject to the item pricing regulations or guidelines of another agency, in cases where a specified number of items is allowed to be exempted under two similar exceptions to the requirement of item pricing, such similar provisions shall not be additive. Compliance with another agency's regulations or guidelines shall not be a defense to a violation of M.G.L. c. 94, §§ 184B through 184E or 202 CMR 7.00.

(17) Special additional provisions applicable to food stores or food departments using a consumer price scanner system:

- (a) A food store or food department using a consumer price scanner system shall be subject to inspection by the Deputy Director;
- (b) The Deputy Director shall not cause any food store or food department using a consumer price scanner system to be inspected more than once per calendar month, unless within the previous 30 days there is a verified pattern of consumer complaints, or, upon regular inspection, the food store or food department is not in compliance with 202 CMR 7.00 or M.G.L. c. 94, §§ 184B through 184E, the division may inspect a food store or food department using a consumer pricing scanner system once every week until the food store or food department is found to be in compliance;
- (c) Upon inspection, the Deputy Director shall notify the store manager, who shall provide the inspector with a map of the food store or food department outlining the consumer price scanner locations and the food store or food department's square footage of grocery item retail sales space;
- (d) The food store or food department's number and type of scanners shall be sufficient for the food store or food department's size as defined by 202 CMR 7.00. Any violation of 202 CMR 7.10(17)(d), lacking the requisite number and type of consumer pricing scanners shall result in a fine of \$1,000, which shall not count toward the maximum fine established under section 202 CMR 7.10(17)(g), provided, however, that the Deputy Director may reduce this fine consistent with M.G.L. c. 98, § 29A;
- (e) An inspector may choose to test a consumer price scanner system for accuracy. The inspector may choose the sample size for accuracy tests provided that the size of sample is not less than 50 items and not more than 200 items;
- (f) Any scanning that yields an incorrect price that causes a food store or food department's consumer price scanner accuracy rating to fall below 98% shall constitute a separate violation. 202 CMR 7.10(17)(d) shall not be used to impact a scanner's pass or fail grade, but the cumulative violations of 202 CMR 7.10(17)(f) in any particular store or department shall be used in contributing toward the maximum fine imposed;

(g) Each consumer price scanner shall be graded on a pass or fail basis by inspectors. A failing consumer price scanner shall include, but not be limited to:

1. Missing consumer price scanners;
2. Inadequate signage at eye level or above eye level;
3. Failing to clearly and conspicuously identify and display a scanned item by name or other distinguishing characteristics;
4. Failing to disclose both the loyalty card price and the non-card price if they differ if applicable;
5. Failing to comply with 28 CFR Part 36, Appendix A: *Americans with Disabilities Act Accessibility Guidelines*, or 521 CMR 7.00: *Retail Establishments*; or
6. Failing to post a sign containing the contact information for the Division by the scanner;
7. For each scanner capable of producing an individual item pricing tag, failing to provide the consumer with a means to print a pricing tag; or
8. Failing to provide a means to affix or append the pricing tag to an item or its packaging.
9. Each scanner found to have failed the test shall constitute a separate violation. Notwithstanding the method for determining the amount of civil fines under M.G.L. c. 98, § 29A, a civil fine may be issued for \$200 for each violation, up to a maximum of \$2,500 per inspection; provided, however, that the Deputy Director may reduce any fine imposed under 202 CMR 7.10(17)(g)9. consistent with M.G.L. c. 98, § 29A.

#### 7.11: Retail Checkout Systems, All Massachusetts Retailers

- (1) Pursuant to the terms of M.G.L. c. 98, § 56D, the Director or the Director's inspectors and sealers of weights and measures and their deputies shall, in every 24 month period, examine and test the operation of all automated retail checkout systems in all establishments with three or more cash registers.
- (2) Upon complaint to such officials, those officials shall examine and test the operation of any automated retail checkout system to determine whether the price which an item is offered or advertised for sale, including any advertised special price offered to a customer with a store-issued discount or loyalty card, conforms to the unit or net prices displayed to the customer on the visual display and conforms to the price for which a purchaser is charged by the automated retail checkout system to determine whether the total price for items purchased is correctly represented.
- (3) Nothing shall prohibit the Director or the Director's inspectors and sealers and inspectors of weights and measures and their deputies from examining and testing any system at any time irrespective of the number of cash registers within the establishment.
- (4) The Director or the Director's inspectors and sealers of weights and measures may issue notices of violations of M.G.L. c. 98, § 56D under the terms of M.G.L. c. 98, § 29A.
- (5) If such examination and test reveals that there is evidence of price misrepresentation or information misleading or deceptive to the purchaser of items, or that consumer price scanners, as defined in M.G.L. c. 94, § 184B, do not meet the operational standards defined therein, the owner, manager or the designee of the owner or manager of a retail establishment using such automated checkout system shall be punished for the first failed inspection a civil fine of \$200, for the second failed inspection by a civil fine of \$500 and for any subsequent failed inspection by a civil fine of \$1,000; provided, however, that there shall be no punishment for any inoperable

consumer price scanner that is deployed for reasons other than to obtain an exemption from any law or regulation of the commonwealth requiring the individual price-marking of items offered for sale or for any inoperable consumer price scanner for which a retailer is able to demonstrate to the satisfaction of the inspecting individual that the retailer has communicated in writing with an authorized repair agent, prior to the examination and test, requesting that the inoperable electronic scanner be repaired.

(6) For purposes of 202 CMR 7.11, consumer price scanners shall be deemed fully operational if they operate in the following manner:

- (a) The consumer price scanner clearly and conspicuously identifies and displays the item by name or other distinguishing characteristics;
- (b) The consumer price scanner displays the item's correct price when the item is scanned, and;
- (c) In the case of a retail establishment that uses loyalty cards or otherwise maintains a dual pricing system, the scanner displays both the loyalty card price and the non-card price if they differ.

(7) Each consumer price scanner shall display contact information for the division of standards to report broken scanners.

(8) Consumer price scanners shall be in compliance with 28 CFR Part 36: *Appendix A: Americans with Disabilities Act Accessibility Guidelines* and 521 CMR 7.00: *Retail Establishments*.

(9) Notwithstanding the method for determining the amount of civil fines under M.G.L. c. 98, § 29A, a civil citation may be issued for \$200 for each violation, up to a maximum of \$2,500 per inspection. Each item which scans erroneously shall constitute a separate civil violation.

(10) For purposes of 202 CMR 7.11, an automated checkout system shall mean a cash register, computer, terminal, consumer price scanner or other device capable of interpreting the universal product code or any other code with is on an item offered for sale to consumers used to determine the price of the item being purchased, regardless of whether the code entry is accomplished manually or automatically by a machine.

#### REGULATORY AUTHORITY

202 CMR 7.00: M.G.L. c. 94, §§ 184B through 184E and M.G.L. c. 98, § 56D.