

TITLE XL

AGRICULTURE, HORTICULTURE AND ANIMAL HUSBANDRY

CHAPTER 438

STANDARDS FOR WEIGHTS AND MEASURES

Section 438:1

438:1 Definitions. – In this chapter:

I. "Person" shall be construed to mean both the plural and singular, as the case demands, and shall include individuals, partnerships, corporations, companies, societies, and associations.

II. "Weight(s) and (or) measure(s)" means all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices, except that the term shall not be construed to include meters for the measurement of electricity, gas (natural or manufactured), or water when the same are operated in a public utility system. Such electricity, gas, and water meters are hereby specifically excluded from the purview of this chapter, and none of the provisions of this chapter shall be construed to apply to such meters or to any appliances or accessories associated therewith.

III. "Sell" and "sale" means barter and exchange.

IV. "Commissioner" means the commissioner of agriculture, markets, and food.

V. "Inspector" means a state inspector of weights and measures.

VI. "Sealer" means a sealer of weights and measures of a city.

VII. "Intrastate commerce" means any and all commerce or trade that is begun, carried on, and completed wholly within the limits of the state of New Hampshire, and the phrase "introduced into intrastate commerce" shall be construed to define the time and place at which the first sale and delivery of a commodity is made within the state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

VIII. "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. 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.

IX. A "consumer package" or "package of consumer commodity" means 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.

X. A "nonconsumer package" or "package of nonconsumer commodity" means any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

XI. "Bureau" means the bureau of weights and measures in the department of agriculture, markets, and food.

XII. "Commercial use" means weights and measures used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, commodities, or articles for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge

or payment for services rendered on the basis of weight, measure, or count. Devices used in a determination upon which a charge or service is based include, but are not limited to, taxi meters, odometers, timing devices, and shipping scales. "Commercial use" does not include the determination of the weight, measure, or count of any commodity or thing which is performed within a plant or business as a part of the manufacturing, processing, or preparing for market of that commodity or thing.

Source. 1985, 72:1. 1989, 324:1. 1994, 100:1. 1995, 130:4, 5, eff. July 23, 1995.

Section 438:2

438:2 Systems of Weights and Measures. – The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state of New Hampshire. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the National Institute of Standards and Technology are recognized and shall govern weighing and measuring equipment and transactions in the state.

Source. 1985, 72:1. 1989, 324:2, eff. Aug. 1, 1989.

Section 438:3

438:3 Definitions of Special Units of Measure. – The term "barrel" when used in connection with fermented liquor shall mean a unit of 31 gallons. The term "ton" shall mean a unit of 2,000 pounds avoirdupois weight. The term "cord" when used in connection with wood intended for fuel purposes shall mean the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed, as defined in the National Institute of Standards and Technology Handbook 130 as revised and amended.

Source. 1985, 72:1. 1994, 100:2, eff. July 10, 1994.

Section 438:4

438:4 State Standards of Weight and Measure. – Such weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by the state for use as state standards shall, when the same have been certified as being satisfactory for use as such by the National Institute of Standards and Technology, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory of the state bureau of weights and measures; they shall not be removed from the said office or laboratory except for repairs or for certification.

Source. 1985, 72:1. 1989, 324:3. 1991, 10:1, eff. June 18, 1991.

Section 438:5

438:5 Field Standards and Equipment. – In addition to the state standards provided for in RSA 438:4, there shall be supplied by the state such "field standards" and such equipment as may be found necessary to carry out the provisions of this chapter. The field standards shall be verified upon their initial receipt and at least once each year thereafter by comparison with the state standards.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:6

438:6 Administration; Inspections. – The functions, powers, and duties provided in this chapter are vested in the department of agriculture, markets, and food to be apprised and used by the commissioner of agriculture, markets, and food as specified herein and as otherwise provided by law. Subject to the state personnel rules, and within the limits of available appropriations and funds, the commissioner may employ such inspectors and assistants and incur such expenses as may be necessary to carry out the provisions of this chapter. The commissioner or his inspectors, at his direction, shall at least once a year visit the various cities having local sealers and inspect their work and, in the performance of duties hereunder, he shall inspect, from time to time, the weights, measures, balances or any other weighing or measuring devices of any person, firm, or corporation in those cities.

Source. 1985, 72:1. 1989, 324:4. 1995, 130:4, 5, eff. July 23, 1995.

Section 438:7

438:7 General Powers and Duties of Commissioner. –

I. The commissioner shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by this chapter, and shall keep accurate records of such standards and equipment.

II. The commissioner shall be responsible for the administration and enforcement of the provisions of this chapter and the administrative rules adopted under this chapter.

III. The commissioner may issue an order to any person in violation of this chapter, any term or condition of a license, permit or registration issued under this chapter, or any rule adopted under this chapter. This order may require such remedial or corrective measures as may be necessary. The order shall require elimination of the violation and shall set the time frame within which the remedial or corrective measures shall be completed. Any person to whom an order is directed may appeal to the commissioner or to the superior court.

IV. The commissioner may hold hearings concerning the issuance of licenses, permits or registrations and the enforcement of these and any other provisions of this chapter.

V. The commissioner may impose administrative fines pursuant to RSA 438:40.

VI. The commissioner shall license annually all devices used commercially to provide services on the basis of weight, measure, or count or to establish size, quantity, extent, area or measurement of commodities or articles sold or offered or exposed for sale.

VII. The commissioner shall biennially make to the governor a report on all of the activities under this chapter.

VIII. The commissioner shall designate the registration and expiration dates for all licenses, permits, and registrations issued under this chapter.

Source. 1985, 72:1. 1989, 324:5. 1994, 100:3, 4, eff. July 10, 1994.

Section 438:8

438:8 Rulemaking Authority. –

I. The commissioner shall adopt rules, under RSA 541-A, relative to:

(a) Standards of net weight, measure, or count, and reasonable standards of fill for any commodity in package form.

(b) Technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by inspectors of weights and measures in the discharge of their official duties.

(c) Exemptions from the inspection requirements of RSA 438:14 with respect to weights and measures of such character or size that such inspection would be inappropriate, impracticable, or damaging, to the apparatus in question or from standards listed in RSA 438:8, II and RSA 438:8, III which may cause, in the opinion of the commissioner, disproportionate cost or undue economic hardship to a public solid waste management district, as defined in RSA 53-B, a public facility, as defined in RSA 149-M:4, or transfer station, as defined in RSA 149-M:4.

(d) Compulsory registration of servicemen and service agencies.

(e) Licensing of, and the technical and reporting procedures to be followed by, public weighmasters.

(f) Licensing of weighing and measuring devices used commercially.

(g) Specifications, tolerances, and other technical requirements for weights and measures of the character of those specified in RSA 438:10, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

(1) That are not accurate.

(2) That are not reasonably permanent in their adjustment or will not repeat their indications correctly.

(3) That facilitate the perpetration of fraud.

(h) The establishment and collection of fees for:

(1) Testing and certification.

(2) Licenses and registrations, including application, initial issuance, replacement and duplication.

(3) Examinations.

(4) Placed-in-service forms, inspection report forms, and certification stamps.

(i) The imposition of fines and penalties under RSA 438:40.

(j) Any other matter necessary to the proper administration of this chapter.

II. The commissioner may also adopt, as part of the rules, the definitions and descriptive regulations published by the National Conference on Weights and Measures and amendments, supplements and revisions to such regulations. Rules under this paragraph need not be adopted in accordance with RSA 541-A, but when adopted, shall be filed with the director of legislative services.

III. The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology and published in National Institute of Standards and Technology Handbook 44 and supplements to Handbook 44, or in any publication revising or superseding Handbook 44, shall be the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of the state of New Hampshire, except as specifically modified, amended, or rejected by a rule adopted by the commissioner. For the purpose of this chapter, apparatus shall be deemed to be ""correct" when it conforms to all applicable rules adopted as specified in this section. Other apparatus shall be deemed to be ""incorrect."

III-a. In the case where solid waste, as defined in RSA 149-M:4, is weighed in a vehicle at a public facility, as defined in RSA 149-M:4, or transfer station, as defined in RSA 149-M:4, and such solid waste weighed is 200 pounds or less per load, paragraphs II and III shall not apply to such weighing devices. For the purposes of this paragraph, such solid waste weighed and collected shall be received only from a person resident in the town or municipality of which that public facility or public transfer station is a part. Such solid waste shall be assessed for 100 percent of the total net weight but such assessment shall not be for less than the minimum amount levied.

IV. The specifications, tolerances, and other technical requirements for standards used in the testing or calibration of commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Conference on Weights and Measures, and published in the National Institute of Standards and Technology Handbook 105 series and supplements to the Handbook 105 series, or in any publication revising or superseding the Handbook 105 series, shall be the specifications, tolerances, and other technical requirements for standards used in the testing and calibration of

commercial weighing and measuring devices of the state of New Hampshire, except as specifically modified, amended, or rejected by a rule adopted by the commissioner, and shall be adopted as part of this chapter and need not be adopted in accordance with RSA 541-A.

V. The operational guides, for use in the field evaluation of commercial weighing and measuring devices, by the bureau of weights and measures and registered servicemen, together with amendments thereto, as recommended by the National Conference on Weights and Measures, and published in the National Conference on Weights and Measures Publication 12, Examination Procedure Outlines for weighing and measuring devices, or in any publication revising or superseding Publication 12, shall be the evaluation procedures used in the field evaluation of weighing and measuring devices used commercially in the state of New Hampshire, except as specifically modified, amended, or rejected by a rule adopted by the commissioner, and shall be adopted as part of this chapter and need not be adopted in accordance with RSA 541-A.

Source. 1985, 72:1. 1989, 324:6, 7. 1991, 10:2. 1994, 100:5, eff. July 10, 1994. 2003, 42:1-4, eff. July 5, 2003. 2008, 286:2, 3, eff. Aug. 26, 2008.

Section 438:9

438:9 Testing of Standards; Testing at State Supported Institutions. – The commissioner, or his inspectors at his direction, at least once each year, shall test the standards of weight and measure procured by any city for which the appointment of a sealer of weights and measures is provided by this chapter, and shall approve the same when found to be correct, and he shall inspect such standards at least once each year. He shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting his findings, in writing, to the supervisory board and to the executive office of the institution concerned.

Source. 1985, 72:1. 1991, 10:3, eff. June 18, 1991.

Section 438:10

438:10 General Testing. – When not otherwise provided by law, the commissioner, or his inspectors at his direction, shall have the power to inspect and test to ascertain if they are correct all weights and measures kept, offered, or exposed for sale. It shall be the duty of the commissioner, as he may deem necessary, to inspect and test to ascertain if they are correct all weights and measures commercially used (1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count, or (2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count; provided, however, that with respect to single-service devices (that is, devices designed to be used commercially only once and to be then discarded) and with respect to devices uniformly mass-produced, as by means of a mold or die and not susceptible of individual adjustment, tests may be made on representative samples of such devices. The lots of such samples which are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples.

Source. 1985, 72:1. 1989, 324:8, eff. Aug. 1, 1989.

Section 438:11

438:11 Investigations. – The commissioner, or his inspectors at his direction, shall investigate complaints made to him concerning violations of the provisions of this chapter and shall, upon his own

initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this chapter and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:12

438:12 Inspection of Packages. – The commissioner, or his inspectors at his direction, shall from time to time weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether the same contain the amounts represented and whether they are kept, offered or exposed for sale or sold in accordance with law. When such packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the commissioner may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the commissioner may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot. No person shall (1) sell, or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements, or (2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the commissioner.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:13

438:13 Stop-Use, Stop-Removal Orders. – The commissioner, or his inspectors at his direction, shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of his enforcement of the provisions of this chapter he deems it necessary or expedient to issue such orders. No person shall use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under the authority of this section.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:14

438:14 Disposition of Correct and Incorrect Apparatus. – The commissioner, or his inspectors at his direction, shall approve for use and seal or mark with appropriate devices such weights and measures as he finds upon inspection and test to be ""correct" as defined in RSA 438:8, and shall reject and mark or tag as ""rejected" such weights and measures as he finds, upon inspection or test, to be ""incorrect" as defined in RSA 438:8, but which in his best judgment are susceptible of satisfactory repair; provided, however, that such sealing or marking shall not be required with respect to such weights and measures

as may be exempted therefrom by a rule of the commissioner adopted under the authority of RSA 438:8. The commissioner shall condemn and may seize and destroy weights and measures found to be incorrect if not corrected or disposed of as required by RSA 438:19.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:15

438:15 Police Powers, Right of Entry and Stoppage. – With respect to the enforcement of this chapter and any other law dealing with weights and measures that he is or may be empowered to enforce, the commissioner, or his inspectors at his direction, is hereby vested with special police powers, and is authorized to arrest, without formal warrant, any violator of said laws, and to seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts or packages of commodity found to be used, retained, offered, or exposed for sale or sold in violation of law. In the performance of his official duties, the commissioner is authorized to enter and go into or upon, without formal warrant, any structure or premises, and to stop any person whatsoever and to require him to proceed, with or without any vehicle of which he may be in charge, to some place which the commissioner may specify.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:15-a

438:15-a Training of Inspectors. – Any inspector of the department of agriculture, markets, and food appointed to enforce the laws and rules pertaining to weights and measures under RSA 438 shall successfully complete the preparatory training program for part-time police officers established by the police standards and training council pursuant to RSA 188-F no later than 2 years from the date of hire. Upon successful completion of the training program such inspector shall be certified as a part-time police officer. Inspectors serving under permanent appointment on April 27, 1990 who have the power to enforce the laws and rules pertaining to weights and measures under RSA 438 shall also successfully complete the preparatory training program for part-time police officers within one year of April 27, 1990 and shall, upon completion, be certified as part-time police officers.

Source. 1989, 324:9. 1990, 217:2. 1995, 130:4, eff. July 23, 1995.

Section 438:16

438:16 City Sealers of Weights and Measures; Appointment. – There may be a sealer of weights and measures in each city of not less than 35,000 population, according to the latest United States census. The sealer shall be appointed by the mayor, with the consent of the city council; provided, however, that no person shall be so appointed until his appointment has been approved in writing by the commissioner of agriculture, markets, and food and shall hold office during good behavior. The city sealer shall have the same power and duties in the city as state inspectors have throughout the state.

Source. 1985, 72:1; 189:1. 1987, 12:1. 1989, 324:10. 1995, 130:5, eff. July 23, 1995.

Section 438:17

438:17 City Standards and Equipment. – The council of each city for which a sealer has been appointed as provided for by RSA 438:16 shall: (1) procure at the expense of the city such standards of

weight and measure and such additional equipment, to be used for the enforcement of the provisions of this chapter in said city, as may be prescribed by the commissioner, (2) provide a suitable office for the sealer, and (3) provide for the necessary clerical services, supplies, and transportation, and for defraying contingent expenses incident to the official activities of the sealer in carrying out the provisions of this chapter. When the standards of weight and measure required by this section to be provided by a city have been examined and approved by the commissioner, they shall be the official standards for such city. It shall be the duty of the sealer to make, or to arrange to have made, at least as frequently as once a year, comparisons between his field standards and appropriate standards of a higher order belonging to his city or to the state, in order to maintain such field standards in accurate condition. Whenever the city council of a city shall neglect for 6 months to provide such standards, the city clerk of said city, on notification and request by the commissioner, shall provide the same and cause them to be tried, sealed, and deposited at the expense of the city.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:18

438:18 Concurrent Jurisdiction. – The commissioner shall have concurrent authority to enforce the provisions of this chapter, in cities for which sealers of weights and measures have been appointed as provided in this chapter. City sealers shall investigate and prosecute within the jurisdiction of the city, unless the investigation or prosecution in the jurisdiction over a particular case or class of cases is preempted by the state bureau of weights and measures, county attorney or attorney general. City sealers, upon request of the bureau of weights and measures, county attorney, or attorney general, may assist and conduct investigations throughout the state.

Source. 1985, 72:1. 1994, 100:6, eff. July 10, 1994.

Section 438:19

438:19 Duty of Owners of Incorrect Apparatus. – Weights and measures that have been rejected under the authority of the commissioner shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition has been made as required by this section. The owners of such rejected weights and measures shall cause them to be made correct within 30 days or such longer period as may be authorized by the rejecting authority; or, in lieu of correction, the owners may dispose of the rejected weights and measures, but only in such manner as is specifically authorized by the rejecting authority. Weights and measures that have been rejected shall not again be used commercially until they have been officially re-examined and found to be correct, or until specific written permission for such use is issued by the rejecting authority.

Source. 1985, 72:1. 1989, 324:11, eff. Aug. 1, 1989.

Section 438:20

438:20 Method of Sale of Commodities; General. – Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this chapter, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count; provided, however, that liquid commodities may be sold by weight, and commodities not in liquid form may be sold by count, only if such methods give accurate information as to the quantity of commodity sold. All nomenclature, procedure, and methods of sale of commodities in this state shall comply with the National Institute of Standards and Technology Handbook 130 and all amendments to such handbook,

unless otherwise provided in this chapter. The provisions of this section shall not apply (1) to commodities when sold for immediate consumption on the premises where sold, (2) to vegetables when sold by the head or bunch, (3) to commodities in containers standardized by a law of this state or by federal law, (4) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner, (5) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or (6) to unprocessed vegetable and animal fertilizer when sold by cubic measure. The commissioner may adopt such reasonable rules as are necessary to assure that the amounts of a commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

Source. 1985, 72:1. 1989, 324:12, eff. Aug. 1, 1989.

Section 438:21

438:21 Packages; Declarations of Quantity and Origin; Variations; Exemptions. – Except as otherwise provided in this chapter, any commodity in package form introduced, or delivered for introduction into, or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package such definite, plain, and conspicuous declarations of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, (2) the net quantity of the contents in terms of weight, measure, or count, and (3) in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rules adopted by the commissioner; provided, however, that, in connection with the declaration required under clause (2) of this section, neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package shall be used; and provided further that under said clause (2), the commissioner shall, by rule, establish (a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the customer.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:22

438:22 Declarations of Unit Price on Random Packages. – In addition to the declarations required by RSA 438:21, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:23

438:23 Misleading Packages. – No commodity in package form shall be so wrapped, nor shall it be

in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the packages; and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for said commodity by the commissioner.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:24

438:24 Advertising Packages for Sale. – Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be, closely and conspicuously associated with such statement of price, a declaration of the basic quantity of contents of the package as is required by law or rule to appear on the package; provided, however, that, where the law or rule requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit or weight or measure (the declaration that is required to appear first and without parentheses on the package) need appear in the advertisement; and provided further, that there shall not be included as part of the declaration required under this section such qualifying terms as "when packed," "minimum," "not less than," or any other terms of similar import, nor any term qualifying a unit of weight, measure or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:25

438:25 Sale by Net Weight. – The word "weight" as used in this chapter in connection with any commodity shall mean net weight. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:26

438:26 Misrepresentation of Price. – Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least 1/2 the height and width of the numerals representing the whole cents.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:26-a

438:26-a Grocery Stores; Prices. –

I. In this section, the term "grocery store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged, non-potentially hazardous foods; roadside

markets that offer only fresh fruits and fresh vegetables for sale; food service establishments; or food beverage vending machines.

II. Any person who offers items for sale in a grocery store shall mark clearly upon the package of each item sold in packaged form the price of such item, or shall place under the shelf containing the item a uniform shelf tag, or a larger sign indicating item price.

III. A uniform shelf tag shall include:

(a) The regular price of each individual item. The price numbers shall be at least 7/16 of an inch in height;

(b) The unit price; and

(c) The name of the item or a description of the item.

IV. The following items shall not require individual prices:

(a) Cold beverages.

(b) Snack items packaged in individual sizes and designed for immediate consumption.

V. The commissioner shall adopt rules, pursuant to RSA 541-A, regarding:

(a) The pricing of items by grocery stores under this section.

(b) The definition of snack items excepted from the requirements of this section under subparagraph IV(b).

Source. 1990, 120:1, eff. Jan. 1, 1991.

Section 438:26-b

438:26-b Dating Prewrapped Sandwiches. – It shall be unlawful for any person, otherwise subject to inspection under this chapter, to make for sale, sell, offer to sell or procure to be sold any type of prewrapped sandwich, unless each such sandwich is enclosed in a wrapper bearing an expiration date beyond which the sandwich shall not be sold. This section shall not apply to sandwiches intended or expected to be consumed within 36 hours after wrapping. The commissioner shall adopt rules under RSA 541-A relative to the form of the expiration date and any other matter necessary for the proper administration of this section.

Source. 1993, 62:1, eff. Jan. 1, 1994.

Section 438:27

438:27 Meat, Poultry, and Seafood. – [Repealed 1989, 324:18, I, eff. Aug. 1, 1989.]

Section 438:28

438:28 Bread. – [Repealed 1989, 324:18, II, eff. Aug. 1, 1989.]

Section 438:29

438:29 Butter, Oleomargarine, and Margarine. – [Repealed 1989, 324:18, III, eff. Aug. 1, 1989.]

Section 438:30

438:30 Fluid Dairy Products. – [Repealed 1989, 324:18, IV, eff. Aug. 1, 1989.]

Section 438:31

438:31 Flour, Corn Meal, and Hominy Grits. – [Repealed 1989, 324:18, V, eff. Aug. 1, 1989.]

Section 438:32

438:32 Bulk Deliveries Sold in Terms of Weight and Delivered by Vehicle. – When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing, (1) the name and address of the vendor, (2) the name and address of the purchaser, and (3) the net weight of the delivery expressed in pounds, and, if the net weight is derived from determination of gross and tare weights, such gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand, to the commissioner, or the inspector, or the sealer, who, if he desires to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser; provided, however, that, if the purchaser himself carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:32-a

438:32-a Services and Bulk Commodities Sold, Rendered, or Delivered in Terms of Weight by Vehicle. –

I. When a vehicle is used to render or deliver commodities in bulk or provide services in terms of weight units, the vendor of the bulk commodities or services shall include with the original invoice to the purchaser a duplicate copy of the weight ticket that represents the actual weighing of the services or bulk commodities; provided, however, that if the purchaser himself carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the net weight of the commodity or service.

II. The vendor shall keep and preserve the original weight ticket with the invoice for at least 2 years. Copies of the weight tickets and invoices shall be open for inspection by any weights and measures officer of the state at all reasonable times.

Source. 1991, 165:1, eff. July 26, 1991.

Section 438:32-b

438:32-b Contents of Invoice. – The vendor shall provide an invoice to each purchaser of services or bulk commodities sold, rendered, or delivered in terms of weight. The invoice shall contain, but not be limited to, the following:

- I. Net weight.
- II. The location where the weight or service was determined.
- III. The type of service or commodity rendered.
- IV. The date such service or commodity was rendered.

Source. 1991, 165:1, eff. July 26, 1991.

Section 438:33

438:33 Furnace and Stove Oil. –

I. All distillate heating oil sold at retail shall be sold by liquid measure or by net weight in accordance with the provisions of RSA 438:20.

II. In the case of each delivery of such liquid fuel not in package form and in an amount greater than 100 gallons in the case of sale by liquid measure, or 100 pounds in the case of sale by weight, there shall be rendered to the purchaser at the time of delivery a printed delivery ticket which shall clearly state the following:

- (a) The name and address of the vendor;
- (b) The name and address of the purchaser;
- (c) The identity of the type of fuel comprising the delivery;
- (d) The unit price, that is, the price per gallon or per pound, as the case may be, of the fuel

delivered;

(e) In the case of sale by liquid measure, the liquid volume of the delivery shall be determined by a meter with a register printing the meter readings on a ticket from which such liquid volume shall be computed and expressed in terms of the gallon and its binary or decimal subdivisions (said ticket shall not be inserted into the register until immediately before delivery is begun, and in no case shall a ticket be in the register when the vehicle is in motion); or the liquid volume may be determined by a vehicle tank used as a measure when in full compliance with the National Institute of Standards and Technology Handbook 44, as adopted by the National Conference of Weights and Measures, and calibrated by a weights and measures official. Sale by a liquid measuring device, as defined in said Handbook 44, and sale by a vapor meter are excluded from this paragraph;

(f) In the case of sales by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

Source. 1985, 72:1. 1989, 324:13, eff. Aug. 1, 1989.

Section 438:34

438:34 Berries and Small Fruits. – [Repealed 1989, 324:18, VI, eff. Aug. 1, 1989.]

Section 438:35

438:35 Wood. – [Repealed 1994, 100:8, eff. July 10, 1994.]

Section 438:36

438:36 Fees. – All fees and fines collected by a state inspector under the provisions of this chapter shall be forwarded to the commissioner of agriculture, markets, and food to be forwarded by him to the state treasurer. All fees and fines collected by a city sealer in that city shall be for the use of that city for the purposes of this chapter.

Source. 1985, 72:1. 1989, 324:14. 1995, 130:5, eff. July 23, 1995.

Section 438:37

438:37 Construction of Contracts. – Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in RSA 438:2 and 438:3, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:38

438:38 Hindering or Obstructing Officer; Penalties. – Any person who shall hinder or obstruct in any way the commissioner, or any of the inspectors, or a sealer, in the performance of his official duties shall be guilty of a misdemeanor.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:39

438:39 Impersonation of Officer; Penalties. – Any person who shall impersonate in any way the commissioner, or any one of the inspectors, or a sealer, by the use of his seal or a counterfeit of his seal shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:40

438:40 Offenses and Penalties. –

I. It shall be unlawful for any person to:

(a) Use or have in possession for the purpose of using for any commercial purpose specified in RSA 438:10, sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure.

(b) Use or have in possession for the purpose of current use for any commercial purpose specified in RSA 438:10, a weight or measure that does not bear a seal or mark such as is specified in RSA 438:14, unless such weight or measure has been exempted from testing by the provisions of RSA 438:10 or by a rule of the commissioner adopted under the authority of RSA 438:8 or unless the device has been replaced in service as provided by a rule of the commissioner adopted under the authority of RSA 438:8.

(c) Dispose of any rejected or condemned weight or measure in a manner contrary to law or rule.

(d) Remove from any weight or measure, contrary to law or rule, any tag, seal, or mark placed thereon by the appropriate authority.

(e) Sell, or offer or expose for sale, less than the quantity represented of any commodity, thing, or service.

(f) Take more than the quantity he represents of any commodity, thing, or service, when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.

(g) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to law or rule.

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer.

(i) Use commercially any device which has not been licensed in accordance with RSA 438:7, VI.

(j) Violate any provision of RSA 438 or of the rules adopted under the provisions of RSA 438.

II. Any person who, by himself or by his servant or agent, recklessly performs any act prohibited, other than by rule, under this chapter shall be guilty of a misdemeanor. Any individual, acting as the

servant or agent of another person, who knowingly performs any act prohibited, other than by rule, under this chapter shall be guilty of a misdemeanor. A subsequent violation of this chapter perpetrated by anyone other than a natural person shall be a felony.

III. Any person who, by himself or by his servant or agent, or as the servant or agent of another person violates any rule adopted under RSA 438:8 shall be guilty of a violation.

IV. In addition to any other penalty imposed under this chapter, any person who violates any provision of RSA 438, or any rule or order of the commissioner, may be subject to the imposition of an administrative fine levied by the commissioner, not to exceed \$1,000 for each violation.

Source. 1985, 72:1. 1989, 324:15, 16. 1990, 217:1. 1994, 100:7, eff. July 10, 1994.

Section 438:41

438:41 Injunction. – The commissioner is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this chapter.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:42

438:42 Presumptive Evidence. – For the purposes of this chapter, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which it is shown that buying or selling is commonly carried on shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weight or measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, enclosure, stand, or vehicle.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:43

438:43 Validity of Prosecutions. – Inspectors and officials appointed to enforce this chapter or any other laws dealing with weights and measures are hereby empowered, upon their successful completion of the preparatory training program for part-time police officers established by the police standards and training council under RSA 188-F, to prosecute these laws within the jurisdiction of municipal and district courts, unless the prosecutorial jurisdiction over a particular case or class of cases is preempted by the county attorney or the attorney general. Prosecutions for violations of any provision of this chapter are declared to be valid and proper, notwithstanding the existence of any law of this state dealing with matters that may be the same as or similar to those covered by this chapter.

Source. 1985, 72:1. 1990, 217:3, eff. April 27, 1990.

Section 438:44

438:44 Separability Provision. – If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.

Source. 1985, 72:1, eff. July 1, 1985.

Section 438:45

438:45 Citation. – This chapter may be cited as the ""Weights and Measures Act".

Source. 1985, 72:1, eff. July 1, 1985.