

TITLE 4 – BUSINESS AND COMMERCIAL LAW

Chapter 18 Weights And Measures

Subchapter 1 — General Provisions

Subchapter 2 — Standards of Weights and Measures

Subchapter 3 — Uniform Weights and Measures Law

Subchapter 1 — General Provisions

4-18-101 — 4-18-107. [Repealed.]

4-18-108, 4-18-109. [Repealed.]

4-18-110. [Repealed.]

4-18-101 — 4-18-107. [Repealed.]

4-18-108, 4-18-109. [Repealed.]

4-18-110. [Repealed.]

Subchapter 2 — Standards of Weights and Measures

4-18-201 — 4-18-231. [Repealed.]

4-18-201 — 4-18-231. [Repealed.]

Subchapter 3 — Uniform Weights and Measures Law

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4-18-301. Definitions.

For purposes of this subchapter:

(1) “Accurate” means a piece of equipment whose value or performance, including its indications, deliveries, records representations, capacity, or actual value, conforms to the standard within the applicable tolerances and other performance requirements.

(2) “Board” means the State Plant Board.

(3) “Commercial weighing and measuring equipment” means weights and measures and weighing and measuring devices commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce,

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 or measure.

(4) “Commodity” means an article of commerce.

(5) “Correct” as used in connection with weights and measures means conformance to all applicable specification requirements of this subchapter.

(6) “Director” means the Director of the State Plant Board.

(7) “Investigator” means a state investigator of weights and measures.

(8) “Net mass” or “net weight” means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, and coupons, except that, depending on the type of service rendered, packaging materials may be considered to be part of the service. For example, the service of shipping includes the weight of packing materials.

(9) (A) “Package”, except as modified by Section 1 of the Application of the Uniform Packaging and Labeling Regulation, whether standard package or random package, means any commodity:

(i) Enclosed in a container or wrapped in any manner in advance of wholesale or retail sale; or

(ii) Whose weight or measure has been determined in advance of wholesale or retail sale.

(B) An individual item or lot of any commodity on which there is marked a selling price based on an established price per unit of weight or of measure shall be considered a package.

(10) “Person” means both plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.

(11) “Primary standards” means the physical standards of the state that serve as the legal reference from which all other standards for weights and measures are derived.

(12) “Random weight package” means a package that is one (1) of a lot, shipment, or delivery of packages of the same commodity with no fixed pattern of weights.

(13) “Registered service agent” means any individual, agency, firm, company, or corporation that for hire, commission, or other payment of any kind installs, services, calibrates, repairs, or reconditions a commercial weighing or measuring device, and that registers with the Director of the Arkansas Bureau of Standards.

(14) “Sale from bulk” means the sale of commodities when the quantity is determined at the time of sale.

(15) “Secondary standards” means the physical standards that are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.

(16) “Sell” or “sale” means to barter or exchange.

(17) “Standard package” means a package that is one (1) of a lot, shipment, or delivery of packages of the same commodity with identical net contents declarations; for example, one (1) liter bottles or twelve (12) fluid ounce cans of carbonated soda; five

hundred (500) gram or five (5) pound bags of sugar; one hundred (100) meters or three-hundred foot (300') packages of rope.

(18) "Weight" as used in connection with any commodity or service means net weight. When a commodity is sold by drained weight, the term means net drained weight.

(19) (A) "Weight(s) and measure(s)" means all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliance and accessories associated with any or all instruments and devices.

(B) The term "weight(s) and measure(s)" shall not be construed to include meters for the measurement of electricity, natural or manufactured gas, or water when they are operated in a public utility system. Electricity, gas, and water meters are specifically excluded from this section.

History. Acts 2001, No. 587, § 1; 2005, No. 914, § 1.

4-18-302. Systems of weights and measures.

The International System of Units (SI) and the system of weights and measures in customary use in the United States are jointly recognized, and either one (1) or both of these systems shall be used for all commercial purposes in the state. 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.

History. Acts 2001, No. 587, § 2.

4-18-303. Physical standards.

Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the National Institute of Standards and Technology, shall be the state primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the National Institute of Standards and Technology. All secondary standards may be prescribed by the State Plant Board and shall be verified upon their initial receipt, and as often thereafter as deemed necessary by the board.

History. Acts 2001, No. 587, § 3.

4-18-304. Technical requirements for weighing and measuring devices.

The specifications, tolerances, and other technical requirements for commercial, law enforcement, data gathering, and other weighing and measuring devices as adopted by the National Conference on Weights and Measures, published in the National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 4.

4-18-305. Requirements for packaging and labeling.

The Uniform Packaging and Labeling Regulation as adopted by the National Conference

on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to packaging and labeling in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 5.

4-18-306. Requirements for the method of sale of commodities.

The Uniform Regulation for the Method of Sale of Commodities as adopted by the National Conference on Weights and Measures and published in National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to the method of sale of commodities in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 6.

4-18-307. Requirements for unit pricing.

The Uniform Unit Pricing Regulation as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to unit pricing in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 7.

4-18-308. Requirements for the registration of servicepersons and service agencies for commercial weighing and measuring devices.

The Uniform Regulation for the Voluntary Registration of Service Persons and Service Agencies for Commercial Weighing and Measuring Devices as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to the registration of servicepersons and service agencies in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 8.

4-18-309. Requirements for open dating.

The Uniform Open Dating Regulation as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to open dating in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 9.

4-18-310. Requirements for type evaluation.

The Uniform Regulation for National Type Evaluation as adopted by the National Conference on Weights and Measures and published in National Institute of Standards

and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to type evaluation in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 10.

4-18-311. State Division of Weights and Measures.

There is hereby created a State Division of Weights and Measures located for administrative purposes within the Arkansas Bureau of Standards of the State Plant Board. The division is charged with, but not limited to, performing the following functions on behalf of the citizens of the state:

(a) Assuring that weights and measures in commercial services within the state are suitable for their intended use, properly installed, and accurate, and are so maintained by their owner or user.

(b) Preventing unfair or deceptive dealing by weight or measure in any commodity or service advertised, packaged, sold, or purchased within the state.

(c) Making available to all users of physical standards or weighing and measuring equipment the precision calibration and related metrological certification capabilities of the weights and measures facilities of the division.

(d) Promoting uniformity, to the extent practicable and desirable, between weights and measures requirements of this state and those of other states and federal agencies.

(e) Encouraging desirable economic growth while protecting the consumer through the adoption by rule of weights and measures requirements as necessary to assure equity among buyers and sellers.

History. Acts 2001, No. 587, § 11.

4-18-312. Powers and duties of the State Plant Board.

The State Plant Board shall:

(a) Maintain traceability of the state standards to the national standards in the possession of the National Institute of Standards and Technology.

(b) Enforce the provisions of this subchapter.

(c) Issue reasonable regulations for the enforcement of this subchapter, which regulations shall have the force and effect of law.

(d) Establish labeling requirements, establish requirements for the presentation of cost-per-unit information, establish standards of weight, measure, or count, and reasonable standards of fill for any packaged commodity; and may establish requirements for open dating information.

(e) Grant any exemptions from the provisions of this subchapter or any regulations promulgated pursuant thereto when appropriate to the maintenance of good commercial practices within the state.

(f) Conduct investigations to ensure compliance with this subchapter.

(g) Delegate to appropriate personnel any of these responsibilities for the proper administration of this office.

(h) Test annually the standards for weights and measures used by any city or county within the state, and approve the same when found to be correct.

(i) Have the authority to inspect and test commercial weights and measures kept,

offered, or exposed for sale.

(j) Inspect and test, to ascertain if they are correct, weights and measures commercially used:

(1) in determining the weight, measure, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or count, or,

(2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or count.

(k) Test all weights and measures used in checking the receipt or disbursement of supplies in every institution, for the maintenance of which funds are appropriated by the General Assembly.

(l) Approve for use, and may mark, such commercial weights and measures as are found to be correct, and shall reject and order to be corrected, replaced, or removed such commercial weights and measures as are found to be incorrect. Weights and measures that have been rejected may be seized if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The board shall remove from service and may seize the weights and measures found to be incorrect that are not capable of being made correct.

(m) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this subchapter or regulations promulgated pursuant thereto. In carrying out the provisions of this subsection, the board shall employ recognized sampling procedures, such as are adopted by the National Conference on Weights and Measures and are published in the National Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods".

(n) Prescribe, by regulation, the appropriate term or unit of weight or measure to be used, whenever the board determines that an existing practice of declaring the quantity of a commodity or setting charges for a service by weight, measure, numerical count, time, or combination thereof, does not facilitate value comparisons by consumers, or offers an opportunity for consumer confusion.

(o) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce.

(p) Provide for the training of weights and measures personnel, and may also establish minimum training and performance requirements which shall then be met by all weights and measures personnel, whether county, municipal, or state. The Director of the State Plant Board may adopt the training standards of the National Conference on Weights and Measures' National Training Program.

(q) Verify advertised prices, price representations, and point-of-sale systems, as deemed necessary, to determine: (1) the accuracy of prices and computations and the correct use of the equipment, and (2) if such system utilizes scanning or coding means in lieu of manual entry, the accuracy of prices printed or recalled from a database. In carrying out the provisions of this section, the board shall (i) employ recognized procedures, such as are designated in National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations, "Examination Procedures for Price

Verification,” (ii) issue necessary rules and regulations regarding the accuracy of advertised prices and automated systems for retail price charging (referred to as “point-of-sale systems”) for the enforcement of this section, which rules shall have the force and effect of law; and (iii) conduct investigations to ensure compliance.

History. Acts 2001, No. 587, § 12.

4-18-313. Special police powers.

When necessary for the enforcement of this subchapter or regulations promulgated pursuant thereto, the State Plant Board is:

(a) Authorized to enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, he/she shall first present his/her credentials and obtain consent before making entry thereto, unless a search warrant has previously been obtained.

(b) Empowered to issue stop-use, hold, and removal orders with respect to any weights and measures commercially used, stop-sale, hold, and removal orders with respect to any packaged commodities or bulk commodities kept, offered, or exposed for sale.

(c) Empowered to seize, for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of the provisions of this subchapter or regulations promulgated pursuant thereto.

(d) Empowered to stop any commercial vehicle and, after presentation of his credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his possession concerning the contents, and require him to proceed with the vehicle to some specified place for inspection.

(e) With respect to the enforcement of this subchapter, the board is hereby vested with special police powers, and is authorized to arrest, with warrant, any violator of this subchapter.

History. Acts 2001, No. 587, § 13.

4-18-314. Powers and duties of local officials.

Any weights and measures official appointed for a county or city shall have the duties and powers enumerated in this subchapter, excepting those duties reserved to the state by law or regulation. These powers and duties shall extend to their respective jurisdictions, except that the jurisdiction of a county official shall not extend to any city for which a weights and measures official has been appointed. No requirement set forth by local agencies may be less stringent than or conflict with the requirements of the state.

History. Acts 2001, No. 587, § 14.

4-18-315. Misrepresentation of quantity.

No person shall:

(a) sell, offer, or expose for sale a quantity less than the quantity represented, nor
(b) take more than the represented quantity when, as buyer, he/she furnishes the weight or measure by means of which the quantity is determined, nor

(c) Represent the quantity in any manner calculated or tending to mislead or in any way deceive another person.

History. Acts 2001, No. 587, § 15.

4-18-316. Misrepresentation of pricing.

No person shall misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.

History. Acts 2001, No. 587, § 16.

4-18-317. Method of sale.

Except as otherwise provided by the State Plant Board, or by firmly established trade custom and practice:

- (a) commodities in liquid form shall be sold by liquid measure or by weight, and
- (b) commodities not in liquid form shall be sold by weight, by measure, or by count.

The method of sale shall provide accurate and adequate quantity information that permits the buyer to make price and quantity comparisons.

History. Acts 2001, No. 587, § 17.

4-18-318. Sale from bulk.

All bulk sales in which the buyer and seller are not both present to witness the measurement, all bulk deliveries of heating fuel, and all other bulk sales specified by rule or regulation of the State Plant Board, shall be accompanied by a delivery ticket containing the following information:

- (a) the name and address of the buyer and seller;
- (b) the date delivered;
- (c) the quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity, for example, when temperature compensated sales are made;
- (d) the unit price, unless otherwise agreed upon by both buyer and seller;
- (e) the identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and,
- (f) count of individually wrapped packages, if more than one (1), in the instance of commodities bought from bulk but delivered in packages.

History. Acts 2001, No. 587, § 18.

4-18-319. Information required on packages.

Except as otherwise provided in this subchapter or by regulations promulgated pursuant thereto, any package, whether a random package or a standard package, kept for the purpose of sale, or offered or exposed for sale shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

- (a) the identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;
- (b) the quantity of contents in terms of weight, measure, or count; and,
- (c) the name and place of business of the manufacturer, packer, or distributor, in the case of any package kept, offered, or exposed for sale, or sold in any place other than

on the premises where packed.

History. Acts 2001, No. 587, § 19.

4-18-320. Declarations of unit price on random weight packages.

In addition to the declarations required by § 4-18-319, any package being one (1) of a lot containing random weights of the same commodity, at the time it is offered or exposed for sale at retail, shall bear on the outside of the package a plain and conspicuous declaration of the price per kilogram or pound and the total selling price of the package.

History. Acts 2001, No. 587, § 20.

4-18-321. Advertising packages for sale.

Whenever a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or regulation to appear on the package.

History. Acts 2001, No. 587, § 21.

4-18-322. Prohibited acts.

(a) No person shall:

- (1) Use or have in possession for use in commerce any incorrect weight or measure;
- (2) Sell or offer for sale for use in commerce any incorrect weight or measure;
- (3) Remove any tag, seal, decal, or mark from any weight or measure without specific written authorization from the proper authority;
- (4) Hinder or obstruct any weights and measures official or registered service agent in the performance of his or her duties;
- (5) Violate any provisions of this subchapter or regulations promulgated under it;
- (6) Sell or offer for sale any weight or measure for use in commerce, unless it bears an Arkansas Bureau of Standards approved seal or decal, if the seal or decal is applicable to the weight or measure;
- (7) Neglect or refuse to exhibit a weight or measure under the person's control or in the person's possession to any weights and measures official or a registered service agent for inspection, examination, or testing as required by law;
- (8) Perform an annual inspection, examination, or test on a weight or measure if that person is not a weights and measures official or a registered service agent;
- (9) Impersonate in any way the Director of the Arkansas Bureau of Standards, the deputy director, any one of the investigators, or a registered agent of the Arkansas Bureau of Standards by the use of a seal or decal, or in any other manner; or
- (10) Violate any provision of this subchapter or rules promulgated under § 4-18-328.

(b) A person may be prosecuted for a violation of this subchapter notwithstanding the existence of any other valid general or specific act of this state dealing with matters that may be the same as or similar to those covered by this subchapter.

History. Acts 2001, No. 587, § 22; 2003, No. 112, § 4; 2005, No. 914, § 2.

4-18-323. Civil penalties.

(a) (1) Any person who by himself or herself, by his or her servant or agent, or as the servant or agent of another person, commits any of the acts enumerated in § 4-18-322 may be assessed by the State Plant Board a civil penalty of:

(A) Not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600) for a first violation;

(B) Not less than four hundred dollars (\$400) nor more than one thousand two hundred dollars (\$1,200) for a second violation within three (3) years after the date of the first violation; and

(C) Not less than seven hundred dollars (\$700) nor more than two thousand dollars (\$2,000) for a third violation within three (3) years after the date of the first violation.

(2) For a violation to be considered as a second or subsequent offense, it must be a repeat of a violation as enumerated in § 4-18-322.

(b) (1) Any person subject to a civil penalty shall have a right to request an administrative hearing within ten (10) calendar days after receipt of the notice of the penalty.

(2) The board or subcommittee thereof is authorized to conduct the hearing after giving appropriate notice to the respondent.

(3) The decision of the board is subject to appropriate judicial review.

(c) (1) If the respondent has exhausted his or her administrative appeals and the civil penalty has been upheld, he or she shall pay the civil penalty within twenty (20) calendar days after the effective date of the final decision.

(2) If the respondent fails to pay the penalty, a civil action may be brought by the board in any court of competent jurisdiction to recover the penalty.

(3) Any civil penalty collected under this section shall be transmitted to the Plant Board Fund.

History. Acts 2001, No. 587, § 23; 2005, No. 914, § 3.

4-18-324. Criminal penalties.

Any person who intentionally commits any of the acts enumerated in § 4-18-322 is guilty of a Class A misdemeanor.

History. Acts 2001, No. 587, § 24; 2005, No. 914, § 4.

4-18-325. Restraining order and injunction.

The Director of the State Plant Board is authorized to apply to any court of competent jurisdiction for a restraining order, or a temporary or permanent injunction, restraining any person from violating any provision of this subchapter.

History. Acts 2001, No. 587, § 25.

4-18-326. Presumptive evidence.

Whenever there shall exist a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weight or measure or weighing or measuring device is regularly used for the business purposes of that place.

History. Acts 2001, No. 587, § 26.

4-18-327. Regulations to be unaffected by repeal of prior enabling statute.

The adoption of this subchapter or any of its provisions shall not affect any regulations promulgated pursuant to the authority of any earlier enabling statute unless inconsistent with this subchapter or modified or revoked by the State Plant Board.

History. Acts 2001, No. 587, § 27.

4-18-328. Regulations.

The Arkansas Bureau of Standards may by regulation adopted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., adopt as a regulation of the bureau specifications, tolerances, and regulations for commercial weighing and measuring devices set out in the National Institute of Standards and Technology Handbooks 44 and 130, or in any similar publication issued by the National Institute of Standards. In drafting the regulations, the bureau shall consider whether the specifications, tolerances, and regulations published by the National Institute of Standards and Technology are consistent with the needs of Arkansas businesses and consumers and may modify, amend, or delete suggested language found in the National Institute of Standards and Technology handbooks.

History. Acts 2001, No. 587, § 28.

4-18-329. Fees for tests or inspections.

(a) The Arkansas Bureau of Standards of the State Plant Board shall collect charges as provided in this section for the testing and certification of testing apparatus and for testing and inspection made pursuant to this chapter.

(b) The bureau shall collect the following fees for testing and inspection and for no other purposes:

(1) (A) For International Organization of Legal Metrology Class E1 and E2 and American National Standards Institute and ASTM International Class 1, weighing one kilogram (1 kg) or less, the bureau shall collect a fee for testing of not less than sixty dollars (\$60.00) or more than one hundred eighty dollars (\$180); and

(B) For International Organization of Legal Metrology Class E1 and E2 and American National Standards Institute and ASTM International Class 1, weighing more than one kilogram (1 kg) but not more than thirty kilograms (30 kg), the bureau shall collect a fee for testing of not less than one hundred dollars (\$100) or more than three hundred dollars (\$300);

(2) (A) For International Organization of Legal Metrology Class E2, F1, F2, American National Standards Institute and ASTM International Class 1 and 1.1, 2, 3, and 4(5), and National Institute of Standards and Technology Class S, S-1, and P(Q), weighing two pounds (2 lbs.) or one kilogram (1 kg) or less, the bureau shall collect a fee for testing of not less than twenty dollars (\$20.00) or more than sixty dollars (\$60.00);

(B) For International Organization of Legal Metrology Class E2, F1, F2, American National Standards Institute and ASTM International Class 1 and 1.1, 2, 3, and 4(5), and National Institute of Standards and Technology Class S, S-1, and P(Q), weighing more than two pounds (2 lbs.) or one kilogram (1 kg), but not more than twenty pounds (20 lbs.) or ten kilograms (10 kg), the bureau shall collect a fee for testing of not less than forty dollars (\$40.00) or more than one hundred twenty dollars (\$120);

(C) For International Organization of Legal Metrology Class E2, F1, F2, American National Standards Institute and ASTM International Class 1 and 1.1, 2, 3, and 4(5), and National Institute of Standards and Technology Class S, S-1, and P(Q), weighing more than twenty pounds (20 lbs.) or ten kilograms (10 kg), but not more than fifty pounds (50 lbs.) or thirty kilograms (30 kg), the bureau shall collect a fee for testing of not less than eighty dollars (\$80.00) or more than two hundred forty dollars (\$240); and

(D) For International Organization of Legal Metrology Class E2, F1, F2, American National Standards Institute and ASTM International Class 1 and 1.1, 2, 3, and 4(5), and National Institute of Standards and Technology Class S, S-1, and P(Q), weighing more than fifty pounds (50 lbs.) or thirty kilograms (30 kg), but not more than twenty-five hundred pounds (2,500 lbs.) or one thousand two hundred fifty kilograms (1,250 kg), the bureau shall charge a fee for testing of not less than one hundred dollars (\$100) or more than three hundred dollars (\$300);

(3) (A) For International Organization of Legal Metrology Class M1, M2, and M3, American National Standards Institute and ASTM International Class 6(5), and National Institute of Standards and Technology Class F and (Q), weighing ten pounds (10 lbs.) or five kilograms (5 kg) or less, the bureau shall charge a fee for testing of not less than seven dollars (\$7.00) or more than twenty-one dollars (\$21.00);

(B) For International Organization of Legal Metrology Class M1, M2, and M3, American National Standards Institute and ASTM International Class 6(5), and National Institute of Standards and Technology Class F and (Q), weighing more than ten pounds (10 lbs.) or five kilograms (5 kg), but not more than fifty pounds (50 lbs.) or thirty kilograms (30 kg), the bureau shall charge a fee for testing of not less than twelve dollars (\$12.00) or more than thirty-six dollars (\$36.00);

(C) For International Organization of Legal Metrology Class M1, M2, and M3, American National Standards Institute and ASTM International Class 6(5), and National Institute of Standards and Technology Class F and (Q), weighing more than fifty pounds (50 lbs.) or thirty kilograms (30 kg), but not more than one thousand pounds (1,000 lbs.) or five hundred kilograms (500 kg), the bureau shall charge a fee for testing of not less than eighteen dollars (\$18.00) or more than fifty-four dollars (\$54.00); and

(D) For International Organization of Legal Metrology Class M1, M2, and M3, American National Standards Institute and ASTM International Class 6(5), and National Institute of Standards and Technology Class F and (Q), weighing more than one thousand pounds (1,000 lbs.) or five hundred kilograms (500 kg), but not more than two thousand five hundred pounds (2,500 lbs.) or one thousand two hundred fifty kilograms (1,250 kg), the bureau shall charge a fee for testing of not less than forty dollars (\$40.00) or more than one hundred twenty dollars (\$120);

(4) (A) For volume testing of five gallons (5 gal.) or twenty liters (20 l) or less, the bureau shall charge a fee of forty dollars (\$40.00);

(B) For volume testing of more than five gallons (5 gal.) or twenty liters (20 l), but not more than fifty gallons (50 gal.) or two hundred liters (200 l), the bureau shall charge a fee of one hundred dollars (\$100);

(C) For volume testing of more than fifty gallons (50 gal.) or two hundred liters (200 l), but not more than one hundred gallons (100 gal.) or four hundred liters (400 l), the bureau shall charge a fee of two hundred dollars (\$200);

(D) For volume testing of more than one hundred gallons (100 gal.) or four hundred liters (400 l), but not more than one hundred fifty gallons (150 gal.) or six hundred liters (600 l), the bureau shall charge a fee of two hundred fifty dollars (\$250);

(E) For volume testing of more than one hundred fifty gallons (150 gal.) or six hundred liters (600 l), but not more than two hundred gallons (200 gal.) or eight hundred liters (800 l), the bureau shall charge a fee of three hundred dollars (\$300); and

(F) For volume testing of more than two hundred gallons (200 gal.) or eight hundred liters (800 l), but not more than three hundred seventy-five gallons (375 gal.) or one thousand five hundred liters (1,500 l), the bureau shall charge a fee for testing of four hundred fifty dollars (\$450);

(5) (A) For volume gravimetric testing of not more than one quart (1 qt.) or one liter (1 l), the bureau shall charge a fee for testing of seventy-five dollars (\$75.00);

(B) For volume gravimetric testing of more than one quart (1 qt.) or one liter (1 l), but not more than five gallons (5 gal.) or twenty liters (20 l), the bureau shall charge a fee for testing of two hundred dollars (\$200); and

(C) For volume gravimetric testing of more than five gallons (5 gal.) or twenty liters (20 l), but not more than fifty gallons (50 gal.) or two hundred liters (200 l), the bureau shall charge a fee of five hundred dollars (\$500);

(6) For volume liquefied petroleum gas (LPG) provers of not more than one hundred gallons (100 gal.) or four hundred liters (400 l), the bureau shall charge a fee for testing of five hundred dollars (\$500);

(7) For length testing of tapes and rigid rules, the bureau shall charge a fee of seven dollars (\$7.00) per point tested;

(8) (A) For annual inspection and testing of grain moisture meters, the bureau shall charge a fee of fifty dollars (\$50.00);

(B) For calibration of grain moisture meters, the bureau shall charge a fee of fifty dollars (\$50.00);

(C) For recertification of grain moisture meters, the bureau shall charge a fee of fifty dollars (\$50.00);

(D) For placing new or rejected grain moisture meters in service, the bureau shall charge a fee of fifty dollars (\$50.00); and

(E) For noncompliance reports for rejected grain moisture meters, the bureau shall charge a fee of fifty dollars (\$50.00);

(9) For special testing or services not listed in the fee schedule, the bureau shall charge a fee of fifty dollars (\$50.00) per hour; and

(10) For cleaning of standards, special handling, and packing, the bureau shall charge a fee of fifty dollars (\$50.00) per hour.

(c) Funds collected under this section shall be deposited into the State Treasury as special revenue credited to the Plant Board Fund to be used exclusively for the maintenance of facilities and equipment of the bureau.

(d) If any provision of this section or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

History. Acts 2005, No. 890, § 1.

4-18-330. Fruit and commodities — Packing, selling, pledging, etc., with

fraudulent intent — Penalty.

(a) Any person who packs any fruit or other merchantable commodity with the fraudulent intent of misrepresenting the contents, either as to quality or quantity, shall on conviction be punished by a fine not exceeding one thousand dollars (\$1,000) or imprisonment not exceeding one (1) year, or both.

(b) Any person who sells or pledges any commodity, knowing it to be packed in a fraudulent manner with the intent to cheat and deceive, shall on conviction be assessed a civil penalty as provided in § 4-18-323.

History. Acts 2005, No. 914, § 5.

4-18-331. Legal weight of bushel of specific commodities.

The legal weight per bushel of the following shall be:

- (1) Corn, shelled 56 lbs.
- (2) Corn in ear, husked 70 lbs.
- (3) Corn in ear, unhusked 74 lbs.
- (4) Wheat 60 lbs.
- (5) Oats 32 lbs.
- (6) Cottonseed 32 lbs.
- (7) Cornmeal 48 lbs.
- (8) Barley 48 lbs.
- (9) Rye 56 lbs.
- (10) Potatoes 60 lbs.
- (11) Potatoes, sweet 50 lbs.
- (12) Onions 57 lbs.
- (13) White beans 60 lbs.
- (14) Peas 60 lbs.
- (15) Flax seed 56 lbs.
- (16) Blue grass seed 14 lbs.
- (17) Clover seed 60 lbs.
- (18) Timothy seed 60 lbs.
- (19) Millet seed 50 lbs.
- (20) Buckwheat 52 lbs.
- (21) Red top 14 lbs.
- (22) Orchard grass 14 lbs.
- (23) Sorghum 50 lbs.
- (24) Green apples 50 lbs.
- (25) Dried apples 24 lbs.
- (26) Dried peaches 33 lbs.
- (27) Bran 20 lbs.
- (28) Salt 50 lbs.
- (29) Turnips 57 lbs.
- (30) Broom corn seed 48 lbs.
- (31) Johnson grass 28 lbs.

History. Acts 2005, No. 914, § 5.

4-18-332. Bushel of apples — Lawful measure.

(a) A box nine inches (9") deep, twelve inches (12") wide, and twenty inches (20") long constitutes a lawful bushel measure for apples.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and upon conviction shall be assessed a civil penalty consistent with § 4-18-323.

History. Acts 2005, No. 914, § 5.

4-18-333. "Cord" defined.

A cord shall be defined as containing one hundred twenty-eight cubic feet (128 cu. ft.), and a unit of pulpwood shall be defined as containing one hundred twenty-eight cubic feet (128 cu. ft.), and this shall be the basis for purchase of timber or payment of labor in severing timber if the production is handled on cordage basis.

History. Acts 2005, No. 914, § 5.

4-18-334. Director of the Arkansas Bureau of Standards.

(a) The Director of the Arkansas Bureau of Standards is appointed by the Governor and shall serve at the pleasure of the Governor.

(b) The director is vested with police powers and may:

(1) Arrest with warrant any violator of:

(A) This subchapter; or

(B) Any other act dealing with weights and measures; and

(2) Seize for use as evidence with warrant incorrect or unsealed weights and measures or amounts or packages of commodity found to be used, retained, offered, exposed for sale, or sold in violation of law.

(c) The director may establish divisions or offices within the Arkansas Bureau of Standards as he or she may deem necessary for the administration of the duties of the bureau.

(d) The director shall:

(1) Have custody of the state standards of weights and measures and of the other standards and equipment provided under this subchapter;

(2) Keep accurate records of the standards and equipment;

(3) Maintain a general supervision over weights and measures offered for sale, sold, or in use in the state; and

(4) Make a report to the Governor on the activities of his or her office at the end of each fiscal year.

History. Acts 2005, No. 914, § 5.

4-18-335. Staff and equipment of the Arkansas Bureau of Standards.

(a) The Arkansas Bureau of Standards shall be composed of a deputy director, state investigators, and technical and clerical personnel of weights and measures sufficient to accomplish the intent of this subchapter.

(b) The powers and duties given to and imposed upon the Director of the Arkansas Bureau of Standards by this subchapter are also given to and imposed upon the deputy director and investigators when acting at the direction of the director.

History. Acts 2005, No. 914, § 5.

4-18-336. State standards — Certification.

(a) After certification for use by the National Institute of Standards and Technology, the weights and measures in conformity with federal standards shall be the state standards of weight and measure.

(b) The state standards shall:

(1) Be kept in a safe and suitable place in the office or laboratory of the Arkansas Bureau of Standards;

(2) Not be removed from the office or laboratory except for repairs or for certification;

(3) Be submitted at least one (1) time every ten (10) years to the National Institute of Standards and Technology for certification; and

(4) Be used only in verifying the office standards and for scientific purposes.

History. Acts 2005, No. 914, § 5.

4-18-337. Office and field standards — Verification.

(a) In addition to the state standards provided under § 4-18-336, the state shall supply at least one (1) complete set of copies of the state standards to be kept in the office or laboratory of the Arkansas Bureau of Standards, which shall be known as “office standards”, also “field standards”, and equipment as may be found necessary to carry out the provisions of this subchapter.

(b) The office standards and field standards shall be verified upon their initial receipt and verified at least one (1) time each following year by comparing the office standards with the state standards and comparing the field standards with the office standards.

History. Acts 2005, No. 914, § 5.

4-18-338. Rules and regulations — Correct and incorrect apparatus.

(a) The Arkansas Bureau of Standards shall issue from time to time reasonable rules for the enforcement of this subchapter.

(b) These rules may include:

(1) A system of determining the qualifications for registration of and issuing permits to sales and service personnel who for compensation place weighing and measuring devices into commercial use in this state;

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

(3) Rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by investigators of weights and measures in the discharge of their official duties;

(4) Rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval to be used by registered agents of weights and measures in the discharge of their official duties; and

(5) Exemptions from the sealing or marking requirements of § 4-18-341 with respect to weights and measures of character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question.

(c) The rules shall include specifications, tolerances, and regulations for weights and measures specified in § 4-18-341 designed to eliminate from use without prejudice to apparatus that conform as closely as practicable to the official standards apparatus that:

(1) Are not accurate and correct;

(2) Are constructed so that they are not reasonably permanent in their adjustment or will not repeat their indications correctly; or

(3) Facilitate the perpetration of fraud.

(d) As used in this subchapter, an apparatus shall be deemed to be correct when it conforms to all applicable requirements promulgated as specified in this section.

History. Acts 2005, No. 914, § 5.

4-18-339. Disposition of correct and incorrect apparatus.

(a) (1) The Director of the Arkansas Bureau of Standards shall:

(A) Approve for use and seal or mark with appropriate devices, weights and measures as he or she finds upon inspection and testing to be correct as defined in § 4-18-338; and

(B) Reject and mark or tag as “rejected” weights and measures as he or she finds upon inspection or test to be incorrect as defined in § 4-18-338, but which in his or her best judgment are susceptible to satisfactory repair.

(2) However, the sealing or marking shall not be required with respect to weights and measures that are excepted under a rule of the director issued under § 4-18-338.

(b) The director shall condemn, seize, and destroy weights and measures found to be incorrect and that in his or her best judgment are not susceptible to satisfactory repair.

(c) Weights and measures that have been rejected may be confiscated and destroyed by the director if not corrected as required by subsections (d) and (e) of this section or if used or disposed of contrary to the requirements of subsection (f) of this section.

(d) Weights and measures that have been rejected under the authority of the director or a sealer shall remain subject to the control of the rejecting authority until suitable repair or disposition has been made as required by this section.

(e) The owners of rejected or noncompliant weights and measures shall cause the weights and measures to be made accurate and correct or may dispose of them in the manner specifically authorized by the director.

(f) Weights and measures that have been rejected shall not again be used commercially until they have been officially reexamined and found to be accurate and correct or until specific written permission for use is issued by the director.

History. Acts 2005, No. 914, § 5.

4-18-340. Investigations.

The Director of the Arkansas Bureau of Standards shall investigate complaints made to him or her concerning violations of this subchapter and upon his or her own initiative shall:

(1) Conduct investigations as he or she deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this subchapter; and

(2) Promote the general objective of accuracy and correctness in the determination and representation of quantity in commercial transactions.

History. Acts 2005, No. 914, § 5.

4-18-341. Testing generally.

(a) When not otherwise provided by law, the Director of the Arkansas Bureau of

Standards shall have the power to inspect and test to ascertain if all weights and measures kept, offered, or exposed for sale are accurate and correct.

(b) Within each calendar year, or less frequently if in accordance with a schedule issued by him or her or as otherwise determined, the director shall inspect and test to ascertain if all weights and measures commercially used in determining the weight, measurement, or count of commodities or things sold, offered, or exposed for sale on the basis of weight, measure, or count or in computing the basic charge or payment for services rendered on the basis of weight, measure, or count are accurate and correct.

(c) (1) However, with respect to single-service devices designed to be used commercially only one (1) time and then to be discarded and to devices uniformly mass produced as by means of a mold or die and not susceptible to individual adjustment, tests may be made on representative samples of the devices.

(2) The lots of which the samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on the samples.

History. Acts 2005, No. 914, § 5.

4-18-342. Packages or amounts of commodities — Inspection — Disposition of nonconforming units.

(a) (1) The Director of the Arkansas Bureau of Standards 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 packages or amounts of commodities contain the amounts represented and whether they are kept, offered, or exposed for sale or sold in accordance with law.

(2) When the 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 director may order them off sale and may so mark or tag them as to show them to be illegal.

(b) A person shall not:

(1) Sell, 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 the 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 or that has not been brought into compliance with legal requirements in any manner except with the specific approval of the director.

History. Acts 2005, No. 914, § 5.

4-18-343. Display of price — Fractions.

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 numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half (½) the height and width of the numerals representing the whole cents.

History. Acts 2005, No. 914, § 5.

4-18-344. Testing bulk meters or liquefied petroleum gas metering devices, pumps, and scales used for commercial transactions.

(a) (1) As used in this section, “pump” means a fuel pump that dispenses products used as motor vehicle fuels, including, but not limited to, gasoline, kerosene, or diesel.

(2) As used in this section, “bulk meter” includes, but is not limited to, a pipeline terminal meter, a rack meter, or a tank truck meter.

(b) (1) (A) A person who owns a bulk meter or liquefied petroleum gas metering device for a commercial transaction must engage a registered service agent to annually inspect and test for the accuracy and correctness of the device.

(B) The duty of the Director of the Arkansas Bureau of Standards to inspect and test bulk meters or liquefied petroleum gas metering devices used for commercial transactions is fulfilled by the registered service agent's annual inspection and test for accuracy.

(2) (A) A person who owns a pump or scale for a commercial transaction must engage a registered service agent to annually inspect and test for the accuracy and correctness of the pump or scale.

(B) The director's duty to inspect and test pumps or scales used for commercial transactions is fulfilled by the registered service agent's annual inspection and test for accuracy.

(c) A registered service agent shall perform the recalibration if the inspection or test indicates the bulk meter or liquefied petroleum gas metering device, pump, or scale needs to be recalibrated.

(d) (1) After the approval of a decal by the Arkansas Bureau of Standards, a registered service agent shall place an approved decal conspicuously on the bulk meter or liquefied petroleum gas metering device, pump, or scale which indicates that it is suitable for trade in accordance with the National Institute of Standards and Technology Handbook 44 and 112, as adopted by the bureau.

(2) A registered service company shall provide security seals approved by the bureau to any individual employed as a registered technician authorized to perform inspections and tests.

(3) A registered technician shall place an approved security seal on the device to prevent any unauthorized access to the adjusting mechanism unless otherwise authorized by the bureau.

(e) The registered service agent shall provide a copy of all bureau-approved inspection and test reports to the bulk meter or liquefied petroleum gas metering device, pump, or scale owner and to the director.

(f) (1) The registered service agent shall retain a copy of all inspection and test reports for a period of three (3) years.

(2) The owner of the device shall retain a copy of all inspection and test reports at the device location for a period of three (3) years.

(g) The director may adopt a system to periodically monitor, inspect, or test bulk meters or liquefied petroleum gas metering devices, pumps, and scales inspected and tested by a registered service agent to check the accuracy of the work of the service agent.

(h) (1) The director may suspend or revoke the certificate of registration of a registered service agent for violating any provision of this subchapter.

(2) If the registration of a registered service agent has been suspended or revoked,

then the service agent may not register with the bureau as a service agent for at least one (1) year.

History. Acts 2005, No. 914, § 5.