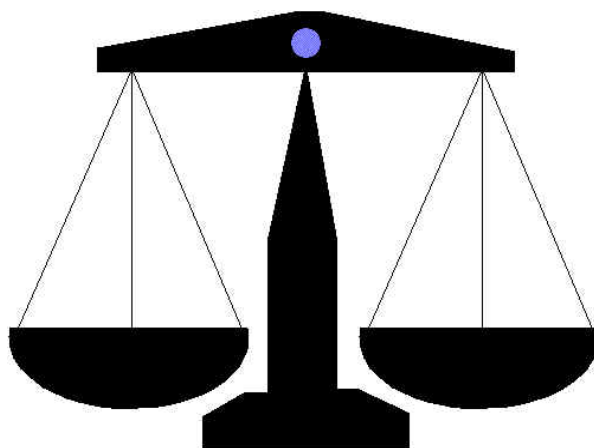


# Oklahoma Department of Agriculture, Food and Forestry

Consumer Protection Services



## Weights & Measures Law and Rules

## Fee Schedule

2800 N. Lincoln Blvd.  
Oklahoma City, OK 73105

Office: 405/522-5968

Fax: 405/522-4584

[www.oda.state.ok.us](http://www.oda.state.ok.us)

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## **ARTICLE 14. AGRICULTURAL WEIGHTS AND MEASURES**

### **B. Standard Weights and Measures**

#### **§2-14-31. Definitions**

As used in this article:

1. "Correct" means conformance to all applicable requirements of this article;

2. "Field standard" means the physical standards which are traceable to the reference standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and rules;

3. "National Conference on Weights and Measures, Inc. (NCWM)" means the national professional organization composed of regulatory officials, industry representatives, and individuals having an interest in weights and measures that develop consensus standards in areas of weighing and measuring device regulation, commodity regulation, and administration of regulatory weights and measures program;

4. "National Institute of Standards and Technology (NIST)" means that subdivision of the United States Department of Commerce responsible for maintaining the standard weights and measures of the United States;

5. "Package" means any commodity put up or uniformly wrapped or sealed in advance of sale in units suitable for either wholesale or retail sale;

6. "Reference standards" means the physical standards of the state which serve as the legal reference from which all other standards and weights and measures are derived;

7. "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale; and

8. "Weights or measures" means all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliance and accessories associated with any instruments and devices. "Weight" used in connection with any commodity means net weight.

#### **§2-14-32. Customary use and metric system**

A. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized. Either one or both of these systems shall be used for all commercial purposes in the state.

B. 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 Conference on Weights and Measures are recognized and shall govern weighing and measuring equipment and transactions in the state.

### **§2-14-33. State primary and secondary standards**

Weights and measures that are traceable to the United States prototype standards supplied by the federal government or approved by the National Institute of Standards and Technology shall be the state reference standards of weights and measures and shall be maintained in the calibration prescribed by the National Institute of Standards and Technology. All field standards may be prescribed by the State Board of Agriculture and shall be verified upon their initial receipt and as required by the Board.

### **§2-14-34. Commercial weighing and measuring devices**

The specifications, tolerances, and other technical requirements for commercial and regulatory weighing and measuring devices as adopted by the National Conference on Weights and Measures and published in Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing and Measuring Devices", and supplements or revisions shall apply to commercial and regulatory weighing and measuring devices in the state.

### **§2-14-35. Board - Powers and duties.**

The State Board of Agriculture shall have the following powers and duties:

1. Maintain traceability of the state standards to the National Institute of Standards and Technology and adopt standard weights and measures for products in conformity with federal standards for use as the standard for weighing and measuring products in Oklahoma;
2. Ensure that all rules conform as nearly as practicable to the uniform regulations 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", including all supplements and revisions thereof;
3. Establish requirements for labeling, for the presentation of cost-per-unit information, for standards of weight, measure, or count, and for standards of fill for any packaged commodity. The Board may establish requirements for open dating information;
4. Conduct investigations to ensure compliance with this article;
5. Inspect and test weights and measures kept, offered, or exposed for sale;

6. Inspect and test to ascertain if the weights and measures commercially used are correct by:

a. determining the weight, measure, or count of commodities or things sold, offered, or exposed for sale on the basis of weight, measure, or count, or

b. by computing the basic charge or payment for services rendered on the basis of weight, measure, or count;

7. Approve for use weights and measures found to be correct and reject and mark as rejected weights and measures found to be incorrect. Approved weights and measures may be marked as approved. 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 condemn and may seize weights and measures found to be incorrect that are not capable of being made correct;

8. 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 are in accordance with this article and rules of the Board. The Board shall use recognized sampling procedures adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods" and supplements and revisions;

9. If a method of declaring the quantity of a specific commodity by weight, measure, numerical count, or combination does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion, an appropriate term or unit of weight or measure may be prescribed;

10. Allow reasonable variations from the stated quantity of contents, including but not limited to 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;

11. Set standards for inspection by rule for circumstances not addressed by the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations" and the National Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods";

12. Promulgate rules for the enforcement of the National Institute of Standards and Technology Handbook Number 130, "Uniform Laws and Regulations," the National Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods, and the act; and

13. Enforce the provisions of Sections 14-31 through 14-43 of this title and rules promulgated thereto.

### **§2-14-36. Request for testing**

The State Board of Agriculture may, at the request of the owner or user of any weighing or measuring device, test a device upon payment of a fee for expenses.

### **§2-14-37. Enforcement of regulations**

When necessary for the enforcement of this article or rules promulgated pursuant thereto, the State Board of Agriculture may:

1. Issue stop-use, hold, and removal orders for any weights and measures commercially used, and issue stop-sale, hold, and removal orders for any packaged commodities or bulk commodities kept, offered, or exposed for sale; and
2. Seize for use as evidence any incorrect or unapproved weight, measure, package, or commodity used, retained, offered, or exposed for sale or sold in violation of this article or rules promulgated pursuant thereto.

### **§2-14-38a - Compliance with Uniform Laws and Regulations**

Any person subject to the provisions of Sections 14-31 through 14-43 of Title 2 of the Oklahoma Statutes shall comply with the provisions of the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements or revisions and the National Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods," and supplements or revisions.

### **§2-14-38.**

- A. 1. "Advertised price" means the price of a consumer item which price a store has caused to be disseminated by means of promotional methods such as an in-store sign, newspaper, circular, television, radio advertising, or other means;
2. "Board" means the State Board of Agriculture;
3. "Computer-assisted checkout system" means any electronic device, computer system, or machine which determines the selling price of a consumer item by interpreting the UPC of the consumer item, or any other use of a similar price look-up function;
4. "Commissioner" means the Commissioner of the Department of Agriculture, Food, and Forestry;
5. "Consumer item" means each item being offered or exposed for sale;
6. "Department" means the Oklahoma Department of Agriculture, Food, and Forestry;

7. "Inspector" means an authorized representative of the Oklahoma Department of Agriculture, Food, and Forestry;
8. "Item price" means the tag, stamp, or mark affixed by an authorized person to a consumer item which sets forth, in Arabic numerals, the retail price thereof;
9. "Manually entered prices" means any method of determining the selling price of a consumer item by means other than a computer-assisted checkout system;
10. "Price look-up function" means the capacity of any checkout system to determine the retail price of a consumer item by way of the manual entry into the system of a code number assigned to that particular consumer item by an inspector or the store or the checkout operator's consultation of a file maintained at the point of sale or within the store;
11. "Sale price" means the price of consumer items offered for sale in good faith at a price below the price for which the consumer items are usually sold in the store;
12. "Shelf price" means the sign or tag placed by an authorized person at each point of display which clearly sets forth the retail price of the consumer item;
13. "Store" means any establishment which offers consumer items for sale at retail. Each separate building within which consumer items are offered for sale at retail shall constitute a separate store location for purposes of this section;
14. "Store-coded item" means the application of a UPC to any consumer item by that particular store; and
15. "Universal product code" (UPC) means the digital figure depicted through the use of bars and spaces, typically attached by the manufacturer or distributor, which may be scanned into the pricing system of a store.

- B. 1. It shall be unlawful for any person to:
  - a. sell, offer, or expose for sale a quantity less than the quantity represented;
  - b. take more than the represented quantity when, as a buyer, the person furnishes the weight or measure by means of which the quantity is determined;
  - c. represent the quantity in any manner calculated or tending to mislead or in any way deceive another person;, or
  - d. misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person.

2. It shall be unlawful for a store to charge a retail price for any consumer item which exceeds the lowest then price in that store, whether a shelf, sale, advertised, or otherwise publicly communicated price, of the consumer item.

C. Every person, store, firm, partnership, corporation, or association which sells, offers for sale, or exposes consumer items for sale at retail within this state shall disclose to the consumer the item price of the consumer items by:

1. Causing to be conspicuously, clearly, and plainly marked, stamped, typed, or affixed to the items, the retail price in Arabic numerals; or

2. Disclosing to the consumer the item price of the consumer items by causing a shelf price to be posted at the point of display in Arabic numerals or maintaining a price look-up function for the consumer items, except for consumer items held in outside storage and warehouses.

D. 1. If the shelf labels do not conform with the provisions of this section, the store shall be subject to the following penalties:

a. for violations discovered upon the first inspection following any twelve-month period in which no violation of this section has been found, the store will receive a Letter of Warning and be placed on an increased inspection frequency. Stores will remain on an increased inspection frequency until they have achieved a twelve-month period in which no violation of this section has been found,

b. for violations identified in the second inspection following any twelve-month period within which no such violations have been found, a penalty in the amount of Ten Dollars (\$10.00) per violation shall be imposed, but in no event shall the total penalty for all violations identified at the second inspection exceed Five Hundred Dollars (\$500.00), and

c. for violations identified in a third or subsequent inspection in a twelve-month period following a previous violation of this section, the penalties shall be doubled, up to a maximum of One Thousand Dollars (\$1,000.00) per inspection.

2. Every day a violation is continued shall constitute a separate violation.

E. For the purpose of determining the compliance of a store with this section, an inspection shall be conducted of a sample of no fewer than fifty and no more than three hundred consumer items, with inspectors typically sampling fifty consumer items for each cash register that may be operational in a given store using a computer-assisted checkout system. Inspections for manually entered prices may consist of sample sizes of no fewer than ten and no more than fifty items. The sample shall be selected by the inspector from a cross section of all items offered for sale at the store inspected.

F. 1. For any price accuracy inspection under this section, the store representative shall afford the inspector access to the test mode of the computer-assisted checkout system in use at the store or to a comparable function of the system and to the retail price information contained in any price look-up system.

2. In a store with a laser scanning or other computer-assisted checkout system, the inspector shall be permitted, whether through an agency issued scanner or otherwise, to compare the item, shelf, sale, or advertised price of any consumer items offered in the store, not to exceed three hundred consumer items selected from a cross section of all items offered for sale at the location at any one inspection, with the programmed computer price. Inspectors should sample fifty consumer items for each cash register that may be operational in a given store not to exceed three hundred consumer items selected from a cross section of all items offered for sale at the location of that store at any one inspection. The store shall provide access to its computers as necessary for the inspector to make the inspection.

G. Undercharges shall not be considered an inaccurately priced item when calculating price accuracy under this section.

H. Stores on a routine inspection frequency may be inspected once per six (6) months, depending upon available resources of the Department. Stores on an increased inspection frequency may be inspected in sixty-day intervals.

I. Any prior adoption in statute or rule of the Examination Procedure for Price Verification Handbook 130 issued by the National Institute of Standards and Technology is revoked. However, the inspection and testing procedures used by inspectors shall generally conform to the standards of the then current Handbook 130 issued by the National Institute of Standards and Technology, specifically including verification procedures for manually entered prices.

J. Any store found in violation of this section shall be subject to the penalties specified in this subsection. Each day on which a violation is continued shall constitute a separate violation. The failure to accurately price ninety-five percent (95%) of all consumer items sampled as part of a given inspection shall be deemed a failed inspection. If the programmed computer price or manual checkout price, in cases where there is no programmed computer price, exceeds the shelf, sale, advertised, or otherwise publicly communicated price of any consumer item, the store shall be subject to the following penalties:

1. For violations discovered upon the first inspection following any twelve-month period in which no violation of this section has been found, the store will receive a Letter of Warning and be placed on an increased inspection frequency. Stores shall remain on an increased inspection frequency until they have

achieved a twelve-month period in which no violation of this section has been found;

2. For violations discovered upon the second inspection following any twelve-month period in which no violation of this section has been found, the store shall pay a penalty of Seventy-five Dollars (\$75.00) for each consumer item which results in an overcharge or potential overcharge;

3. Third violations discovered within any twelve-month period will be assessed a one-hundred-fifty-dollar penalty per consumer item which results in an overcharge or potential overcharge;

4. Fourth violations discovered within any twelve-month period will be assessed a two-hundred-fifty-dollar penalty per consumer item which results in an overcharge or potential overcharge;

5. Fifth violations discovered within any twelve-month period will be assessed a three-hundred-fifty-dollar penalty per consumer item which results in an overcharge or potential overcharge; and

6. Sixth or subsequent violations within any twelve-month period will be assessed a five-hundred-dollar penalty per consumer item which results in an overcharge or potential overcharge, with a maximum penalty per overcharge of Five Hundred Dollars (\$500.00) per consumer item, regardless of additional violations per inspection per store location.

K. The provisions of the Oklahoma Small Business Regulatory Flexibility Act pertaining to waiver or reduction of any administrative penalty or administrative fine shall not be applicable to this section and may not be relied upon for a reduction or deferral or as imposing any procedural prerequisite or as a defense, respecting actions investigated and/or brought under this section.

#### **§2-14-39. Liquid measure**

Except as provided by the State Board of Agriculture, commodities in liquid form shall be sold by liquid measure or by weight. Commodities not in liquid form shall be sold only by weight, measure, or count, so long as the method of sale provides accurate quantity information.

#### **§2-14-40. Labeling**

A. Except as provided in this article or by rules promulgated pursuant thereto, any package kept for the purpose of sale, offering for sale, or exposing for sale shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

1. The identity of the commodity in the package, unless the commodity can easily be identified through the wrapper or container;

2. The quantity of contents in terms of weight, measure, or count; and

3. The name and place of business of the manufacturer, packer, or distributor if the package is kept, offered or exposed for sale, or sold in any place other than the premises where packed.

B. In addition, any package being one of a lot containing random weights 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.

#### **§2-14-41. Advertising**

Whenever a packaged commodity is advertised in any manner and the retail price is stated, a declaration of quantity shall also appear on the package closely associated with the retail price. Where a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

#### **§2-14-42. Unlawful acts**

It shall be unlawful for any person to violate any provision of this article or rules promulgated by the State Board of Agriculture. No person shall:

1. Use or have in possession for use in commerce any incorrect weight or measure;
2. Remove any tag, seal, or mark from any weight or measure without specific written authorization from the proper authority; or
3. Hinder or obstruct any weights and measures official in the performance of the duties of such official.

#### **§2-14-43. Presumption**

If a weight or measure or weighing or measuring device exists where buying or selling is commonly carried on, there shall be a rebuttable presumption that the weight, measure, or weighing or measuring device is regularly used for business purposes.

## **Uniform Packaging and Labeling Regulation**

### **35:10-9-1. Packaging and labeling of products**

The Board adopts the "Uniform Packaging and Labeling Regulation" as approved by the National Conference on Weights and Measures and published in Handbook 130, "Uniform Laws and Regulations", supplements, and revisions.

## **Checking the Net Contents of Packaged Goods**

### **35:10-11-1. Sampling procedures**

The Board adopts and will employ the sampling procedures as approved by the National Conference on Weights and Measures and published in Handbook 133 "Checking the Net Contents of Packaged Goods," supplements, and revisions.

## **Method of Sale of Commodities**

### **35:10-13-1. Method of Sale of food and non-food commodities**

The Board adopts the "Uniform Regulations for the Method of Sale of Commodities" as approved by the National Conference on Weights and Measures and published in Handbook 130, "Uniform Laws and Regulations", supplements, and revisions.

## **NATIONAL TYPE EVALUATION PROGRAM**

### **35:10-15-1. Definitions**

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

**"Certificate of Conformance"** means a document issued by the National Institute of Standards and Technology and/or the National Conference on Weights and Measures based on testing in participating laboratories, this document constitutes evidence of conformance of a type with the requirements of Handbook 44 and the National Institute of Standards and Technology Handbook 105-1, 105-2, or 105-3.

**"National Type Evaluation Program"** means a program of cooperation between the National Institute of Standards and Technology, the National Conference on Weights and Measures, other Federal Agencies, the States, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions as approved by the National Conference on Weights and Measures published in Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," and the National Conference on Weights and Measures, Publication 14, "National Type Evaluation

Program, Administrative Procedures, Technical Policy, Checklist and Test Procedures."

**"Participating laboratory"** means any State Measurement Laboratory that has been accredited by the National Institute of Standards and Technology or accrediting authority, in accordance with its program for the Certification of Capability of State Measurement Laboratories, any State Weights and Measures Agency, or other laboratory that has been authorized to conduct a type evaluation under the National Type Evaluation Program.

**"Type"** means a model or models of a particular measurement system, instrument, element, or field standard that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the Certificate of Conformance.

**"Type evaluation"** means the testing, examination, and/or evaluation of a type by a Participating Laboratory under the National Type Evaluation Program.

### **35:10-15-2. Application**

This subchapter shall apply to all classes of devices and equipment (except for cotton bale weighing devices at cotton gins in Oklahoma) as specified by the National Conference on Weights and Measures and published in Handbook 44 and the National Institute of Standards and Technology Handbook 105-1, 105-2, and 105-3.

### **35:10-15-3. Certificate of Conformance**

The Board shall require any weight, or measure, or weighing and measuring instrument or device (except for cotton bale weighing devices at cotton gins in Oklahoma) to be issued a Certificate of Conformance prior to its use for commercial or law enforcement purposes.

### **35:10-15-4. Participating Laboratory**

The Board is authorized to operate a Participating Laboratory as part of the National Type Evaluation Program. In this regard, the Board is authorized to charge and collect fees for type evaluation services commensurate with the expense incurred to conduct such services.

## **OPEN DATING**

### **35:10-17-1. Open dating for perishable and semi-perishable commodities**

The Board adopts the "Uniform Open Dating Regulation" as adopted by National Conference on Weights and Measures and published in Handbook 130, "Uniform Laws and Regulations", supplements, and revisions.

## **EXAMINATION PROCEDURES FOR PRICE VERIFICATION**

### **35:10-19-1. Examination procedures for price verification**

The Board adopts the "Examination Procedure for Price Verification" as adopted by the National Conference on Weights and Measures and published in Handbook 130, "Uniform Laws and Regulations", supplements, and revisions.

**TITLE 35. STATE DEPARTMENT OF AGRICULTURE  
CHAPTER 2. FEES**

**SUBCHAPTER 3. FEE SCHEDULES**

**35:2-3-3. Schedule of weights and measures fees**

(a) Owners or users requesting tests of weighing and measuring devices shall pay the following fees:

<b><u>TYPE OF DEVICE</u></b>	<b><u>FEE</u></b>
<b>VEHICLE SCALES</b> (Per indicator)	<b>\$200.00</b>
<b>RANCH AND ANIMAL SCALES</b> (Per Indicator)	<b>\$200.00</b>
<b>PORTABLE PLATFORM SCALES</b> (up to 1,000 lbs.)	<b>\$ 50.00</b>
<b>PLATFORM SCALES</b> (more than 1,000 lbs.)	<b>\$150.00</b>
<b>COUNTER AND COMPUTING</b> (up to 40 lbs.)	<b>\$ 30.00</b>
<b>COUNTER AND COMPUTING</b> (more than 40 lbs.)	<b>\$ 50.00</b>
<b>GRAIN HOPPER SCALES</b>	<b>\$400.00</b>
<b>HANGING SCALES</b>	<b>\$ 50.00</b>
<b>OVERHEAD TRACK</b>	<b>\$150.00</b>
<b>PACKING SCALES</b> (up to 30 lbs.)	<b>\$ 30.00</b>
<b>PACKING SCALES</b> (over 30 lbs.)	<b>\$ 50.00</b>
<b>OVER AND UNDER SCALES</b>	<b>\$ 30.00</b>

- (b) The following license fees shall be paid to the Oklahoma Department of Agriculture, Food, and Forestry:
- (1) A fee of One Hundred Dollars (\$100.00) for issuance or renewal of a service agency license.
  - (2) A fee of Twenty-five Dollars (\$25.00) for issuance or renewal of a service technician license for each category of weights and measures serviced.
  - (3) A fee of Ten Dollars (\$10.00) for the issuance of an apprentice service technician license.
  - (4) A fee of Ten Dollars (\$10.00) for the issuance of a duplicate license.
  - (5) Any license renewal applications received thirty (30) or more days after the renewal shall result in the Board charging a penalty equal to and in addition to the cost of the license.

### **35:10-1-3. Handbook and publication editions**

References to a Handbook or publication in these rules shall mean the following edition of the National Institute of Standards and Technology (NIST), unless a different reference is made in the text of the rule:

- (1) Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (2010 Edition).
- (2) Handbook 130 "Uniform Laws and Regulations" (2009 Edition), excluding Section G "Uniform Engine Fuels and Automotive Lubricants Regulation."
- (3) Handbook 133 "Checking the Net Contents of Packaged Goods" (2005 Edition).
- (4) Handbook 105-1 "Specifications and Tolerances for Field Standard Weights" (1990 Edition).
- (5) Handbook 105-2 "Specifications and Tolerances for Field Standard Measuring Flasks" (1996 Edition).
- (6) Handbook 105-3 "Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards" (2004 Edition).
- (7) Publication 14 (2009 Edition).
- (8) Publication 12 (1991 Edition).
- (9) Federal Grain Inspection Service Moisture Handbook (2006 Edition).