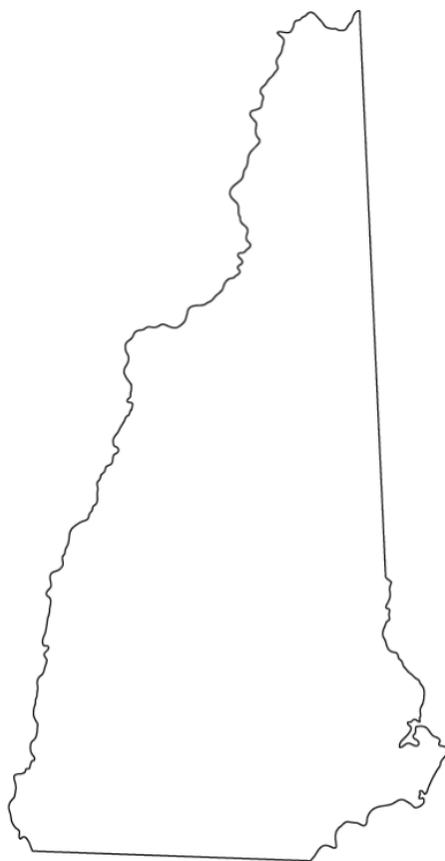


New Hampshire Grocers Guide to Weights & Measures



Issue Date: August 2016
First Edition
NH Division of Weights and Measures

Introduction

The primary purpose of this guide is to promote communication and cooperation between the New Hampshire Division of Weights and Measures (“Division”) and the businesses that we regulate. The ultimate goal is to improve the compliance rate for device certification and licensure, packaging and labeling and correct weighing procedures. The Division relies heavily on education and cooperation from businesses— working closely with various organizations including, but not limited to: the NH Grocers Association, the UNH Cooperative Extension Service, and the NH Division of Weights and Measures Advisory Board in educating their members on the problems and issues encountered by the Division. Consumers have the right to expect correct packages that have accurate net content information. Likewise, retailers have the right to expect that competitors are following the same rules. Consistent, uniform application of the laws and rules ensures fairness between the buyer and seller, and between competing businesses filling the same market niche.

This guide provides basic information that will help businesses meet standard requirements for licensure and certification of devices, packaging and labeling, as well as correct weighing procedures and other related weights and measures requirements. It is not intended as a complete representation of the Division’s laws and rules.

The Division aims to work with businesses by providing education and guidance to help ensure compliance with state laws and rules.

This publication is provided by the New Hampshire Division of Weights & Measures. It was modeled after the Minnesota Division of Weights & Measures’ Grocers Guide. The Division was given permission to use the Minnesota Grocers Guide in drafting this version.

This guide is intended for educational purposes and to assist businesses in complying with the Division’s laws and rules. It is not a complete representation of the Division’s laws and administrative rules but is solely for educational purposes. Information contained in this guide is current as of August 2016. However, statutory or rulemaking changes, or changes to the NIST Handbooks after this date, may cause part of the information to be invalid. The Division will update the guide as necessary to reflect any changes in the law, rules or handbooks. Businesses are highly encouraged to read the complete set of laws and rules provided at the link below.

For a complete and official version of the Division’s laws and administrative rules go to:
<http://www.agriculture.nh.gov/laws-rules/index.htm>

For the most recent NIST Handbooks including annual updates go to:
<http://www.nist.gov/pml/wmd/pubs/handbooks.cfm>

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Section I. Audits

The Division of Weights and Measures conducts random audits of licensed devices to check for accuracy of weighing and measuring devices, packages that have been produced or labeled with net weight, and price verification in stores. Audit inspections are informal inspections and may be part of a random audit or if a new business is licensed with the division or in response to a consumer complaint. An audit may also be conducted to monitor previously identified problem areas. If the audit shows shortages in net contents, a complete formal inspection may be conducted.

Basic Procedure for Audits

Before selecting random samples for inspection, all random weight packages at the location will be counted. The inspector will then determine the size of the inspection lots and the number of lots to be inspected. In large stores it is common to have two or three lots of fresh meat, a lot of pre-packaged items, one or more lots of deli items, and perhaps a produce lot. Each inspection lot will either pass or fail. If all lots pass, the store is in compliance. Inspection lots failing the regular inspection will be scheduled for re-inspection. An inspection report detailing the findings will be given to the store manager and a written warning may be given to the manager as well. Re-inspections of failed lots will be conducted within a timely but random manner. The entire store will not be re-inspected, only the commodity lot that previously failed. Should problems persist on a follow up visit, an administrative penalty may result.

An audit inspection may be in response to a consumer complaint, a routine audit, or part of a regional or national investigation. In all cases, inspections are conducted on a random basis and the business will not be given advance notice when inspectors/investigators visit a business.

The inspector/ investigator will review proper methods-of-sale and correct tare procedures for bulk items and may simulate direct cash register sales of selected items to determine if proper tare procedures are applied at the point of sale.

How Businesses Can Assist with Audits:

- Inspectors require a work area to set up test equipment in close proximity to the audit areas.
- Inspectors require use of packaging materials on site to assess proper tare determination such as deli containers.



A Division Investigator testing a small capacity scale during an audit at a local grocery store.

Section II. Scale Requirements

The Division of Weights and Measures licenses private service technicians to test, calibrate, and certify commercial devices. If a scale passes inspection, the service technician will attach a certification stamp to the scale. The service technician will also complete an inspection report and leave a copy with the business and send a copy to the Division.

Basic Scale Requirements

- A scale used in a commercial application must have an NTEP certificate of conformance.
 - The certificate of conformance ensures that the scale is of commercial quality.
- A commercial scale must also be suitable for its intended use.
 - Commercial equipment shall be suitable for the service in which it is used with respect to elements of its design, including but not limited to its weighing capacity (for weighing devices), its computing capability (for computing devices), the character, number, size, and location of its indicating or recording elements, and the value of its smallest unit and unit prices. See HB 44 G-UR.1.1.
- New scales must be inspected and placed into service by a licensed New Hampshire service technician or division official before using.
 - Once the scale is inspected and certified, i.e., the scale passes inspection and a certification stamp is put on the device, and licensed with the Division, the scale may be used commercially.

Proper Installation and Operation of the Scale System

Scale Installation

Scales should be installed according to the manufacturer's instructions, noting any instructions marked on the device. When installing a scale in a fixed location make sure that the foundation, supports, or any other parts of the device will not disturb the scale's operation or performance. All scales need to be maintained in a level condition. For example, deli scales placed on shelf units which are attached to the deli case must be stable so the scale is maintained in a level condition.

Position of Equipment

Scales equipped with a weight display and used in direct sales shall be positioned so that customers can "reasonably" see the display and observe the weighing or measuring operation. The weight display must not be obscured by signs or other products. Scales

equipped with a “mast” indicator must be positioned so customers can see the display. All direct sale weighing operations must take place in full view of the customer.

Customer’s Indications

Weight displays must be shown on the customer’s side of computing scales used for direct sales to retail customers. Computing scales with digital indications, such as the net weight, unit price, or total price, must show the same information on the customer’s side.

Point-of-Sale Systems

The sales information recorded by cash registers that are interfaced with a scale must contain the following information for items weighed at the register: (1) the net weight; (2) the unit price; (3) the total price, and (4) the product class; or, in a system equipped with a price look-up capability, the product name or code number. All of the above items must appear on the cash register receipt.

Tare Function

On any scale, the tare division must be equal to the scale division. For example, if the scale has a division size of 0.01, the tare division must also be 0.01. The tare function must operate only in a backward direction (that is, in a direction of under-registration) with no load on the scale. A device designed to automatically clear any tare value must also be designed to prevent the automatic clearing of tare until a transaction has been completed. For more information on tare requirements, see the “Tare Weight Section, in Section VII “Package Requirements.”

Foundations, Supports, and Clearance

The foundation and supports of any scale installed in a fixed location should provide strength, rigidity, and permanence of all components. Clearance must be provided around all “live” parts so nothing touches the scale itself or interferes with items placed on the scale. Product displays must not interfere with the scale.

Debris must be cleared from the edges of a scanner platter on a regular basis to insure accurate weighing. Binding usually causes losses to the scale owner. All scales should be inspected daily to ensure they are in a zero-balance condition. Scales that do not return to zero are not correct and can defraud the customer or the business.

Recommended Minimum Load

A recommended minimum load is specified as 20 scale divisions for Class III scales (i.e., grocery scales), since weighing light loads is likely to result in large errors. The recommended minimum load for a grocery scale with 0.01 pound scale divisions is 0.2

pounds. For a scale with 0.005 pound divisions the recommended minimum load is 0.1 pounds.

Technical Details

Commercial Quality Scales

Commercial scales manufactured after January 1, 1986 must be labeled Class III and have an identification plate with the serial number, manufacturer, model number, maximum capacity, number of divisions, and size of the smallest division. Commercial scales manufactured before January 1, 1986 may be labeled Class III and have an identification plate as described above. A scale manufactured before 1986, which has no class marking, is considered “commercial quality” if it has a manufacturer’s name, serial number, maximum capacity, and division size printed on the scale.

New scales installed in New Hampshire that were manufactured after January 1, 1996, must have a Certificate of Conformance issued by the National Type Evaluation Program (NTEP). In order to meet commercial quality requirements, mechanical scales must have a zero adjustment that requires a tool for operation. Electronic scales must have a means for sealing the calibration adjustment mechanism, whether through a physical seal or through an audit trail.

**Bathroom scales, baby scales, portion scales, scales marked “not legal-for-trade”, and mechanical scales with thumb screw zero adjustments, are not commercial quality scales and cannot be used commercially in New Hampshire.*

Section III. Licensing Requirements

All commercial devices need to be licensed annually. There is an initial application and an annual fee based on each commercial device licensed. To have a device inspected and certified, contact a licensed New Hampshire service technician. Licensure indicates that devices are in compliance with inspection and certification requirements pursuant to RSA 438.

For a current list of New Hampshire licensed service technicians, log onto the Division's website and click on the link "For Businesses." A link to the webpage can be found at: <http://agriculture.nh.gov/divisions/weights-measures/businesses.htm>

For a device licensing application, go to the Division's website and click on the "For Businesses" page and scroll down to "Device License Application and Compliance Information." If you already have a weights and measures account number, you should receive a renewal each year. The renewal will be sent to the business 1-2 months prior to license expiration.

Section IV. Certification Requirements

Certification indicates that a device has been inspected and tested, is legal for use and has been left in proper working condition pursuant to the Weights and Measures Act.

Certification is indicated by a colored certification stamp displaying the year and month the device was inspected and is placed conspicuously on the device by a licensed service technician or Division official.

All commercial devices must be inspected and certified annually and display a certification stamp bearing the current year or the preceding year.

Voluntary licensing of non-commercial, NTEP devices is left to the discretion of the business. It is recommended that all scales be maintained in accordance with manufacturer's guidelines.

Scale owners are required to continuously maintain their scales in proper operating condition. This may require more testing and calibrating than the minimum annual certification. See NIST HB 44 G-UR.4.1.

Section V. Method-of-Sale Requirements

Recognizing the difficulty faced by consumers when more than one method-of-sale is employed in the same store for the same product, non-comparable methods-of-sale (i.e., weight and measure), for the same produce should be minimized.

Basic Requirements

All items weighed and sold at the register must include deductions for tare weight (i.e., protective wrap, plastic bags, bag closure devices and rubber bands, etc.). All packaged items sold by weight must be labeled with the net weight, unit price, and total price.

The below guideline applies to the sale of all fruits and vegetables. There are two tables, one for specific commodities and one for general commodities. Search the specific list first to find those commodities that either do not fit into any of the general groups or have unique methods of sale. If the item is not listed, find the general group in the second table. The item may be sold by any method of sale marked with an "X."

Method of Sale for Fresh Fruits and Vegetables (See NIST Handbook 130, 2008)

Method of Retail Sale for Fresh Fruits and Vegetables					
Specific Commodity					
Commodity	Weight	Count	Head or Bunch	Dry Measure (any size)	Dry Measure (1 dry qt or larger)
Artichokes	X	X			
Asparagus	X		X		
Avocados		X			
Bananas	X	X			
Beans (green, yellow, etc.)	X				X
Brussels Sprouts (loose)	X				

Method of Retail Sale for Fresh Fruits and Vegetables

Specific Commodity

Commodity	Weight	Count	Head or Bunch	Dry Measure (any size)	Dry Measure (1 dry qt or larger)
Brussels Sprouts (on stalk)			X		
Cherries	X			X	X
Coconuts	X	X			
Corn on the Cob		X			X
Dates	X				
Eggplant	X	X			
Figs	X				
Grapes	X				
Melons (cut in pieces)	X				
Mushrooms (small)	X			X	X
Mushrooms (portobello, large)	X	X			
Okra	X				
Peas	X				X
Peppers (bell and other varieties)	X	X			X
Pineapples	X	X			
Rhubarb	X		X		

Method of Retail Sale for Fresh Fruits and Vegetables

Specific Commodity

Commodity	Weight	Count	Head or Bunch	Dry Measure (any size)	Dry Measure (1 dry qt or larger)
Tomatoes (except cherry/grape)	X	X			X

**Method of Retail Sale for Fresh Fruits and Vegetables
General Commodity Groups**

Commodity	Weight	Count	Head or Bunch	Dry Measure (any size)	Dry Measure (1 dry qt or larger)
Berries and Cherry/Grape Tomatoes	X			X	
Citrus Fruits (oranges, grapefruits, lemons, etc.)	X	X			X
Edible Bulbs (onions [spring or green], garlic, leeks, etc.)	X	X	X		X
Edible Tubers (Irish potatoes, sweet potatoes, ginger, horseradish, etc.)	X				X
Flower Vegetables (broccoli, cauliflower, brussel sprouts, etc.)	X		X		
Gourd Vegetables (cucumbers, squash, melons, etc.)	X	X			X
Leaf Vegetables (lettuce, cabbage, celery, etc.)	X		X		
Leaf Vegetables (parsley, herbs, loose greens)	X		X	X	
Pitted Fruits (peaches, plums, prunes, etc.)	X	X			X
Pome Fruits (apples, pears, mangoes, etc.)	X	X			X
Root Vegetables (turnips, carrots, radishes, etc.)	X		X		

Commodities sold by measure must be sold in containers standardized by the Berry Basket and Box Code in NIST Handbook 130. For a link to NIST Handbook 130: go to ***Section XI Statutes and Administrative Rules.***

Packaged Items

Standard weight packaged deli items, such as cheeses, sliced meats, parfait cups, casseroles, party trays, pizza, and dinners, must be labeled with the net weight of the package and the price. Random weight packaged deli items, such as the items listed above, must be labeled with the net weight of the package, unit price and total price.

Pre-packaged Meat and Poultry

Packaged turkeys and other random weight whole poultry must be sold by weight and labeled with net weight, unit price, and total price. Standard packaged poultry and meat (all packages of the same commodity have the same net weight) must be labeled with a net weight. The price of these packages must be clearly marked at the display location.

Bakery Items

All pre-packaged bakery items must be labeled with the correct net weight. This requirement does not prohibit including a count on the label (e.g. cookies, donuts).

Packaged Firewood

Packaged natural wood offered for sale in packaged form in quantities less than 1/8 cord or 16 cubic feet must display the quantity in terms of cubic feet, or fractions of cubic feet.

Section VI. Posting of Prices, i.e., Unit Pricing

Grocery stores shall post the prices of their commodities in accordance with RSA 438:26-a, II and III. Snack items and cold beverages may be priced individually or priced using a shelf tag in accordance with RSA 438:26-a, II and III. Displays of snack items and cold beverages containing more than one item of a similar commodity, such as candy bars or ice cream novelties, may be priced using a placard or shelf tag which is adjacent to the display and which lists the price of each or all of the items in the particular display. See Agr 1406.

Labeling of Prices

- 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 the item price.

A uniform shelf tag shall include:

- The regular price of each individual item. The price numbers shall be at least 7/16 of an inch in height;
- The unit price; and
- The name of the item or a description of the item.

The following items shall not require individual prices:

- Cold beverages;
- Snack items packaged in individual sizes and designed for immediate consumption. These items may be priced using a shelf tag. See RSA 438:26-a

Section VII. Package Requirements

Consumers have the right to get what they pay for. They expect that the “net weight” of packaged items are weighed and labeled accurately. Retailers have the right to be held to reasonable standards and to expect their competitors to meet the same standards.

Pursuant to RSA 438:21, packages of commodities introduced into intrastate commerce, or offered for sale or sold in intrastate commerce, shall be plainly and conspicuously labeled to show:

- The identity of the commodity, unless that can be plainly seen through the wrapper or container;
- The net contents stated in terms of:
 - Weight;
 - Measure; or
 - Count in accordance with Agr 1406.03; and
- If the commodity is offered for sale or sold in a place other than on the premises where it was packed:
 - The name and place of business of the manufacturer or grower; and
 - The name and place of business of the packer, if the packer is different from the manufacturer or grower.
- The weight, measure or count of commodities introduced into intrastate commerce, or offered for sale or sold in intrastate commerce, shall be as stated on the labeling required by (a)(2) above, except that:
 - Reasonable variation in accordance with NIST Handbook 133 shall be permitted;
 - Small packages shall comply with NIST Handbook 130. See Agr 1406.02

Labeling of Packages Sold by Count

When a packaged commodity is measured in terms of count only, or in terms of count and some other appropriate unit, weight or measure, and the individual units are fully visible to the purchaser, the packages shall be labeled in accordance with NIST Handbook 130, Uniform Laws and Regulations, IV Uniform Regulations, A, Uniform Packaging and Labeling Regulation, provided that:

- The labeling on packages confined to intrastate commerce and containing 6 or fewer items shall not be required to include a statement of count; and
- The labeling on packages that might enter interstate commerce shall include a statement of count unless the count is one. See 1406.03.

Tare Weight

- Dealing with tare weights is a common source of errors in retail grocery operations.
- These small errors, multiplied hundreds of times each day, can cost the store or its customers a significant amount of money.
- “Tare” refers to packaging materials (bags, trays, containers, etc.), which customers should not pay for.
- The weight of the tare materials must be subtracted from the gross weight of the packaged product in order to determine the correct net weight and the correct price.
- Tare weights are commonly determined by personnel in the meat and produce departments, deli counter, and at the check-out register.
- All of these areas present unique problems that can result in inaccurate net weight determination and potentially failed lots during an inspection. (See the Common Problems section).
- The responsibility to accurately apply tare weights to packages that are weighed at the store lies solely with the retailer. See Section VIII.

How to Produce Accurate Packages: Use the features of your weighing system (i.e., scale) to assist in producing accurate packages, maintain accurate tare weights, and minimize human error:

- Refer to the scale’s operator’s manual;
- Understand how to manually override the tare values programmed into the scale system;
- Maintain accurate tare weights by performing regular tare checks;
- Periodically check the tare values stored in the scale;
- Inform the central tare administrator of any errors.
- Verify dry tare values by weighing the tare products;
- Make sure your packaging matches the programmed tare;
- Conduct your own audit inspection of the packages in your display;
- Update the tare values when your packaging material changes;
- Maintain a current list of pre-packaged tare values from outside distributors;
- Make sure the packages are not sitting in the case so long that moisture loss affects the net weight.

Minimize human error

- Most packaging errors are human errors;
- Failure to update tare values in a timely manner;
- Regular staff training is recommended to avoid tare issues.

Inspection of “lots”

The following 2 requirements are from NIST Handbook 133. Both requirements apply to the inspection of all lots of packages.

“Average” requirement

- In general, the average net quantity (weight, measure or count) must meet or exceed the quantity on the label.

Individual package requirement & Maximum Allowable Variation “MAV”

- Packages that are under filled by more than a “reasonable” amount will be considered unreasonable errors.
- Unreasonable shortages are not generally permitted, even though other packages in the same lot or shipment are overfilled.
- There are no specified limits for overfilling, which is usually controlled by the packer.
- The limit for what qualifies as a “reasonable” shortage error is called the Maximum Allowable Variation (MAV).
- Packages that are under filled by more than the MAV are considered unreasonable errors.
- The MAV values are listed in NIST Handbook 133 and the amount varies according to the size of the package.
- Under-filled packages are considered unreasonable errors.
- Minimal variations may occur with good manufacturing practices but the average package quantity in a “lot” shall not be below the stated quantity.

Basic Requirements for Tare

Items packaged on-site:

- Tare weight can easily be determined by separately weighing the dry packaging material.

Pre-packaged random weight items:

- Tare weight for case ready items must be obtained from the manufacturer.
- Many times these tare weights are printed on the outside of the case. For example, cryo-vac spare ribs that were pre-packaged off site and random weight packages.
- Good communication with suppliers is essential in order to maintain accurate, up-to-date tare information.

Bulk items

- Tare weight must be deducted from the gross weight at the point of sale.
 - Thin plastic bags with a wire closure often require a minimum tare of 0.01 pound;
 - Bags for bulk coffee beans typically require a 0.03 pound tare;
 - Salad or olive bar containers.
- Problems occur when the same product is placed into more than one size bag.
 - Apples are a good example. The consumer can select a few apples and place them in a thin plastic bag or they can purchase a half peck bag.
 - In both cases, the apples are sold by weight at the same unit price. In order to ensure accurate net weight, two different tare weights must be employed for the same product. If the cashier cannot manually enter the proper tare weight, the business must use the greater of the two tare values to ensure the customer is not shorted.
 - This problem can occur with any product where the customer can select more than one size bag or container.

Deli Items

- With the exception of the thin sanitary tissue placed on the scale platter, all direct sales must account for the weight of the container or bag.
- Examples include, but are not limited to, lobster bags, deli salad or hot food containers. As with the apple example above, multiple container sizes for the same product will require multiple tare values.

Section VIII. Price Advertising of Bulk Commodities

Whenever a bulk commodity is advertised in any manner and the price of the commodity is stated in the advertisement the following should be adhered to:

- There shall be closely and conspicuously associated with the statement of price a declaration of the basic unit of weight, measure, or count; and
- Such declaration of the basic unit of weight, measure, or count shall not include any qualifying term, such “jumbo,” “giant” or “full” that tends to exaggerate the amount of the commodity. See Agr 1406.

Pricing of Bulk Food Commodities Including Price Posting and Display

- The price of food commodities sold from bulk shall be computed in terms of the price of whole units such as kilograms, pounds, ounces, gallons and liters, and not in terms of fractions or decimals of units;
- The price of food commodities sold from bulk shall be posted, displayed and advertised in terms of the price of whole units such as those listed above;
- When the price of food commodities is posted, displayed or advertised in terms of the price of a whole unit in accordance with the above, supplemental posting, display or advertising of the price in terms of a fraction or a decimal of the unit shall be permitted if:
 - Such posting, display or advertising is in print no larger than that used to post, display or advertise the whole-unit price; and
 - The mathematical conversion of the price per decimal or fraction of the unit to the price in terms of the whole unit computes to the whole-unit price to the nearest cent.
- If a retailer elects to provide a container for a food commodity sold from bulk, the weight of the container shall not be included when the commodity is weighed for the purpose of computing the cost to the customer; and the retailer may make a separate charge for the container if such separate charge is conspicuously posted, displayed and advertised in association with the whole-unit price of the commodity.
- If a retailer computes the net weight of a food commodity through a computer, cash register or other electronic device, the customer shall receive a receipt that includes the net weight, price per unit and total price. See 1406.07

Bulk Candy

Candy sold from bulk, such as individually wrapped candies, shall be sold by net weight. The weight of the wrappers, sticks and other packaging materials (i.e., tare) shall not be included in the net weight. If the candy is pre-packed in containers or wrappers bearing a declaration of weight, measure or count, it shall not be sold from bulk. See Agr 1406.09

Section IX. Common Problems Found in the Marketplace

The Division of Weights and Measures has observed several common problems when conducting audits of packages. These problems are repeatedly encountered in various sized stores statewide. The following list will help you identify and reduce these issues.

Issues with Centralized Programmed Tare Systems

The purpose of these systems is to increase efficiency and promote uniformity among a chain of stores. However, the following problems can arise:

- All stores in the chain may not be packaging a particular commodity in the same way;
- One store may include an extra soaker pad in packages of a particular cut of meat; while another store may use a different size tray for a particular item;
- If a tare value is found to be incorrect at one store, the information may not be passed along to the rest of the stores;
- There may be only one tare value programmed for a product that may be packaged in several different sized packages;
- It is imperative that the packager understands proper tare procedures in order to produce a correctly labeled package;
- Tare weights must be programmed for all bulk commodities that are weighed at the register;
- Inspectors often find produce items, dry bulk food items, or salad/olive bar items with incorrect tare programmed at the register;
- The same commodity packaged in different ways requires different tare weights.

Shelf Life and Moisture Loss

- All perishable products experience some degree of moisture loss regardless of the packaging material.
- Moisture loss leads to short-weight packages and increases with a longer shelf life.
- Products with a long shelf life need to be re-weighed periodically to ensure accurate net weight declarations.
- This is particularly true of frozen meat and seafood products with a very long shelf life.
- Other problem areas include smoked meats and fish or whole-bagged fresh chickens, which tend to lose moisture rapidly due to leaking packages.

Section X. Definitions

Some Common Weights and Measures Definitions

Certification: Certification indicates that a device has been inspected and tested, is legal for use and has been left in proper working condition pursuant to the Weights and Measures Act. Certification is indicated by a colored certification stamp displaying the year and month the device was inspected and is placed conspicuously on the device by a licensed service technician or Division official. All commercial devices must be inspected and tested annually and display a certification stamp bearing the current year or the preceding year.

Commercial Device: A commercial device includes, but is not limited to, the following devices: cash register scales, deli scales, candy scales, jeweler scales, farm stand scales, vehicle scales used in direct sales, retail motor fuel devices, vehicle tank meters, and LPG meters.

Commercial Scale: A commercial scale in a grocery store operation includes, but is not limited to, the following: cash register scales, deli scales, candy scales. See RSA 438:1, HB 44.

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. See RSA 438.

Direct Sale: involves a sale in which both parties in the transaction are present when the quantity is being determined. Or in the context of an unattended automated or customer-operated weighing or measuring system such as a self-checkout scale, where there is a direct sale since the automated system represents the business in the transaction. This also includes a customer operated scale at a bulk food section of a store.

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. It included 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. See RSA 438:26-a.

Inspection lot, or “lot”: is defined as a collection of identically labeled packages (except in the case of random packages) available for inspection at one time. The Inspector tests a sample of the packages in a lot, then passes or fails the entire lot based on the results of the samples tested.

Licensure: Licensure indicates compliance with inspection and certification. All commercial devices need to be licensed annually.

Maximum Allowable Variation (MAV): The limit of “reasonable variation” for an individual package is called a Maximum Allowable Variation. An MAV is a deviation from the labeled weight, measure, or count of an individual package. Any packages with a deficiency beyond this amount are considered to be unreasonable. No packages are allowed to exceed the MAV in lot sizes of 3,200 or less packages. These requirements are from selected portions of the NIST Handbook 133: Checking the Net Contents of Packaged Goods.

Method of Sale: Whether sold by weight, measure or count, the method of sale for a commodity must allow the buyer to make price and quantity comparisons.

Information Required on Packages:

- the identity of the commodity in the package, unless the commodity can be easily identified through the wrapper or container;
- the net quantity in terms of weight, measure, or count;
- the name and address of the manufacturer, packer, or distributor, if the packages were not produced on the premises where they are offered, exposed, or held for sale; and
- the unit price, if the packages are part of a lot containing random weight packages of the same commodity.

National Institute of Standards and Technology (NIST): NIST cooperates with the National Conference on Weights and Measures (NCWM) to develop standards in the form of uniform laws, regulations, and methods of practice, which are then published by NIST. Go to <http://www.nist.gov/pml/wmd/pubs/handbooks.cfm> to access the NIST website.

Net Weight: means the weight of the commodity excluding materials, substances, or items not considered to be part of the commodity. Such packaging includes containers, bags,

wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, coupons and the like.

Package: means a commodity put up or packaged in advance of sale in units suitable for either wholesale or retail sale.

Point-of-Sale System: is an assembly of elements including a weighing or measuring element, an indicating element, and a recording element (and may also be equipped with a “scanner” used to complete a direct sales transaction. See HB 44.

Prepackaging Scale: is a computing scale specially designed for putting up packages of random weights in advance of sale.

Random Weight Package: a package that is one of a lot, shipment, or delivery of packages of the same commodity with no fixed pattern of weights.

Recording Element: an element incorporated in a weighing or measuring device by means of which its performance relative to quantity or money value is permanently recorded on a tape, ticket, card, or the like, in the form of a printed, stamped, punched, or perforated representation. See HB 44.

Registered Service Technician: means an individual who holds a valid certificate of registration from the department of agriculture, markets, and food who, for hire, installs, services, repairs, reconditions, tests, seals, calibrates, or certifies a commercial weighing or measuring device. See RSA 438.

Recorded Representation: means the printed, embossed or other representation that is recorded as a quantity by a weighing or measuring device. See HB 44.

Sale from bulk: means the sale of commodities when the quantity is determined at the time of the sale.

Standard Package: a package that is one of a lot, shipment, or delivery of packages of the same commodity with identical net contents declarations. Examples: 1 L bottles, 5 lb bags of sugar. Standard weight packages are packages of a particular commodity that all contain the same net weight. These packages contain a net weight declaration on the package provided by the manufacturer. They are intended to be scanned at the check-out register.

Tare weight: the weight of a container, wrapper, or other material that is deducted from the gross weight to obtain the net weight. Soaker pads, labels, wire closures, mesh bags, staples, skewers, coupons, prizes, and decorations are all considered as components of the total tare weight.

Section XI. Statutes and Administrative Rules

New Hampshire Division of Weights and Measures Statutes and Administrative Rules

The Division of Weights and Measures mission is to verify and promote accuracy and equity in the marketplace for both consumers and businesses, by supporting and regulating commerce sold by weight or measure in state commerce. The Division licenses and regulates commercial devices used to weigh or measure commodities in direct sale applications.

For a complete and official version of the Weights and Measures Act (RSA 438), NIST Handbooks, and administrative rules go to the following links:

- For RSA 438: <http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XL-438.htm>
- For administrative rules Agr 1400: http://www.gencourt.state.nh.us/rules/state_agencies/agr1400.html
- For NIST Handbook 44 go to: <http://www.nist.gov/pml/wmd/pubs/hb44-14.cfm>
- For NIST Handbook 130 go to: <http://www.nist.gov/pml/wmd/pubs/hb130-14.cfm>
- For NIST Handbook 133 go to: <http://www.nist.gov/pml/wmd/pubs/hb133.cfm>

Section XII. Division Contact Information

Division of Weights and Measures Contact Information

Division website: <http://agriculture.nh.gov/divisions/weights-measures/>

Division Main Office: (603) 271-3700

Device Licensing: (603) 271-2894

Metrology Laboratory: (603) 271-0894