

# New York State Weights and Measures Law

## Article 16 of the Agriculture and Markets Law and Related Sections

Issued May 6, 2013

**Note: Changes to Section 39 of the Agriculture and Markets Law made in 2009 have preempted sections of Section 197-b. Text printed in ~~strikeout~~ text should no longer be enforced. Text in *italic type* was added for clarification and is not technically part of the statute.**

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**Section 176. Declaration of policy and purpose**

The legislature hereby finds and declares that voluntary and orderly conversion to the metric system of weights and measures is of vital importance to the economy of the state. It is hereby declared to be the public policy of this state to encourage the gradual implementation of the metric system throughout the state's government, industry, commerce, business, education and agriculture. This article is enacted in the exercise of the public power in order to encourage such implementation and to provide a revised code of weights and measures which will be responsive to the present and future needs of commerce, industry and consumers. The legislature finds and declares that the coordination and administration of this unitary regulatory system governing weights and measures throughout the state should be, and is hereby, vested in the commissioner of agriculture and markets and that enforcement of this article by the counties and cities of the state shall be under his supervision.

**Section 177. Authorized systems of weights and measures; basic units**

1. The metric system of weights and measures and the system of weights and measures in customary use in the United States are jointly recognized, and either system shall be used for all commercial purposes within the state. However, the International Metric System ("SI"), as defined in the Metric Conversion Act of nineteen hundred seventy-five and as such definition may hereafter be amended, is hereby adopted as the preferred system within the state.
2. 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 bureau of standards or its successor organization, the national institute of standards and technology, of the United States department of commerce are recognized and shall govern weighing and measuring equipment and transactions in the state.

**Section 178. Physical standards of weights and measures**

The primary standards within the state shall be the weights and measures furnished by the government of the United States, based upon the federal prototype standards, and such other standards as may be received from the federal government in addition thereto or in renewal thereof, as well as other standards which may be added by the state department of agriculture and markets and certified by the national bureau of standards or its successor organization, the national institute of standards and technology.

**Section 179. Powers and duties of the commissioner**

The commissioner is hereby authorized to:

1. Administer, supervise and enforce the provisions of this article.
2. Promulgate such rules and regulations as he may deem necessary to supplement and give full effect to this article.
3. a. Adopt and incorporate by reference in such rules and regulations any official handbook, or part thereof, published by the national bureau of standards or its successor organization, the national institute of standards and technology, and file any handbook, or part thereof, so adopted with the secretary of state.  
  
b. Adopt rules and regulations in consultation with the commissioner of environmental conservation, setting forth standards relating to petroleum product quality, specifications, and sampling and testing methods. Rules and regulations relating to octane ratings and lead content of gasoline shall be consistent with applicable federal statutes and regulations. Insofar as practicable, such rules and regulations shall be consistent with standards established by the National Institute of Standards and Technology and the American Society for Testing and Materials.

4. Take charge of the standards adopted by this article as the primary standards of the state; cause them to be kept in the principal office of the department in the city of Albany, from which they shall not be removed except for repairs or for certification; and take all other precautions for their safekeeping.
5. Submit such primary standards to the national bureau of standards or its successor organization, the national institute of standards and technology, for certification as often as he may deem necessary or upon the request of such bureau.
6. Maintain a complete set of copies of such primary standards, which shall be used for adjusting municipal standards, and the primary standards shall not be used except for the adjustment of this set of copies.
7. Procure such apparatus, equipment and standards, if the same have not already been procured, as are necessary in the comparison and adjustment of municipal standards.
8. Keep a complete record of the standards, balances and other related apparatus which are in his possession.
9. Inspect, either personally or through his authorized agents, as often as he deems necessary but no less than once every two years, the standards of weights and measures of each county and of each city which maintains a weights and measures program; and at least every five years, compare the same with those in his possessions and make such corrections in the municipal standards as are necessary; and keep a record of the same.
10. Supervise the weights and measures, weighing and measuring devices and systems, and accessories related thereto, which are sold, offered or exposed for sale, or used in the state.
11. Test, calibrate and certify, upon the request of any person, firm or corporation, standards of weights and measures, weighing and measuring devices and systems, and accessories related thereto; and charge such fees therefor as he deems appropriate.
12.
  - a. Establish specifications, amounts of tolerances and reasonable variations allowable for weights and measures, weighing and measuring devices and systems, and accessories relating thereto, for packaged commodities sold, or offered or exposed for sale in the state, for the composition and quality of petroleum products, and the testing methods therefor, giving due recognition to federal and state requirements, and enter into such written agreements as the commissioner may deem appropriate, with federal agencies and other state agencies for the purpose of establishing and enforcing uniform specifications and tolerances and
  - b. Establish, by regulation, and collect an appropriate fee commensurate with costs, for the examination of all new types of weighing and measuring devices and systems, and accessories relating thereto prior to their introduction into commerce.
13. Inspect and test, either personally or through his authorized agents, weights and measures, weighing and measuring devices and systems, and accessories relating thereto which are used commercially within the state by any person, firm or corporation 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 in computing the basic charge or payment for services rendered on the basis of weight, measure or count, or in the case of coin counting machines which are used commercially within the state by any coin processor required to be licensed pursuant to article twenty-seven-A of the general business law ("coin processor licensing act"), in determining an accurate count of coins, in order to ascertain if such weights and measures, weighing and measuring devices and systems, or accessories related thereto are correct and are being used correctly; and charge fees commensurate with the cost of each such inspection or test for inspections and tests which are not otherwise conducted by municipalities. The commissioner is also authorized to charge fees commensurate with the cost of each such inspection or test for inspections and tests conducted for the purpose of certifying municipal weighing and measuring devices and systems. Fees authorized by this subdivision shall be established by the commissioner by regulation.
14. Weigh, measure and inspect, either personally or through his authorized agents, packaged commodities kept, offered or exposed for sale, sold or in the process of delivery to determine whether such packages contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this article or the rules and regulations promulgated pursuant thereto.

15. Cause to be tested, as often as he deems necessary by a weights and measures official all weights and measures, weighing and measuring devices and systems, and accessories related thereto, used in checking the receipt or disbursement of supplies in every state agency or institution, and report in writing to the head of the agency or institution concerned; and, at the request of the head of any state agency or institution, appoint in writing one or more employees, then in actual service of such agency or institution, who shall act as special deputies for the purpose of checking the receipt or disbursement of supplies.

16. Supervise municipal weights and measures programs and, in conjunction therewith, examine and evaluate, either personally or through his authorized agents, such programs as often as he deems necessary and report the results thereof.

17. Establish, jointly with the state civil service commission, standards governing the qualifications and appointments of municipal directors of weights and measures, their deputies and employees.

18. Provide technical assistance and training, and issue such instructions to municipal weights and measures officials as he deems appropriate to effectuate the provisions of this article. Such instructions shall be binding upon and govern such officials in the discharge of their duties.

19. a. Inspect, test, and take samples, of any and all petroleum products kept, offered or exposed for sale or in the process of delivery or transport and inspect any and all documents and records required to be maintained by this article. The commissioner of taxation and finance may request from the commissioner cooperation and technical assistance, including, among other things, the inspection, testing and sampling of petroleum products, in connection with the administration and enforcement of the fee and taxes imposed with respect to such products by or pursuant to article twelve-A, thirteen-A, twenty-eight or twenty-nine of the tax law.

b. Provide test kits, sample containers and shipping and custody documents for municipal weights and measures programs and reimburse such municipalities for the cost of petroleum product samples and sample shipping to a testing facility designated by the commissioner.

c. Provide financial reimbursement to municipalities for activities undertaken by municipal weights and measures programs, for one annual inspection, screening test, and sample of fuel being held, kept, stored, or transported in a terminal storage tank or in a storage tank located at a retail fuel outlet and for all additional inspections of petroleum products prescribed by the commissioner. The commissioner, by regulation, shall establish the amount of such reimbursement and the means by which municipalities can qualify for such reimbursement.

20. Pursuant to delegation from the commissioner of environmental conservation under paragraph f of subdivision one of section 19-0301 of the environmental conservation law, and notwithstanding any other provision of this chapter, exercise the authority of the department of environmental conservation to test fuels for conformance with applicable standards and enforce against violations of such standards.

## **Section 180. Municipal directors of weights and measures**

1. There shall be a county director of weights and measures in each county, except where (a) a county is wholly embraced within a city there shall be a city director of weights and measures, or (b) where two or more counties have entered into an intermunicipal agreement, pursuant to article five-G of the general municipal law, to share the functions, powers, and duties of one director of weights and measures. Any county or city having a population of one million or more may elect to designate its commissioner of consumer affairs as its director of weights and measures. Subdivision four of this section shall not apply to a commissioner of consumer affairs so designated.

2. No city may institute a weights and measures program. Provided, that any city which maintained a weights and measures program on January first, nineteen hundred seventy-six may continue such program under a city director of weights and measures.

a. Any such city may contract with the legislature of the county in which it is located for the county director of weights and measures to perform the duties of and have the same powers within such city as the city director. Such contract shall fix the amount to be paid annually by the city to the county for such services. During the period such contract is in force and effect, the office of city director of weights and measures shall be abolished.

- b. The county director shall not have jurisdiction in any city which has a city director of weights and measures, except in the county of Westchester the county director shall have concurrent jurisdiction with city directors of weights and measures in such county.

3. Nothing contained herein shall prohibit the governing body of any county or city from assigning to its municipal director powers and duties in addition to the powers and duties prescribed by this article provided such additional powers and duties deal primarily with services designed to aid and protect the consumer, and are not inconsistent with the provisions of this article.

4. The municipal director shall be appointed by the appropriate authority of the municipality in which he resides having the general power of appointment of officers and employees. Where two or more counties have entered into an intermunicipal agreement, pursuant to article five-G of the general municipal law, to share the functions, powers, and duties of one director of weights and measures, such municipal director may reside in any county that is a party to the intermunicipal agreement. He shall be paid a salary determined by the appropriate authority and shall be provided by such authority with the working standards of weights, measures and other equipment as required by the rules and regulations promulgated in accordance with this article. The position of municipal director shall be in the competitive class of the civil service with respect to all persons appointed on or after the effective date of this act.

### **Section 181. Powers and duties of municipal directors; prosecution for violations; local fees**

Each municipal director appointed pursuant to the provisions of section one hundred eighty of this article, personally or through his authorized agents, shall:

1. Administer, supervise and enforce within his municipality the provisions of this article and the rules and regulations adopted pursuant thereto.
2. Take charge of and safely keep the municipal standards and, at least once every five years, submit such standards to the commissioner, at the place where the standards of the state are kept, for calibration and certification.
3. Keep a complete record of the work done by him and make reports of such work to the commissioner at the times and in the form required by the commissioner.
4. In the general performance of his official duties, in the execution of the provisions of this article; have access to all places of business, buildings or premises; and stop any vendor or dealer whatsoever for the purpose of making proper inspections and tests.
5. Inspect, test and ascertain, as frequently as prescribed by the commissioner, if weights and measures, weighing and measuring devices and systems and pricing devices and systems, and accessories related thereto, which are used commercially by any person, firm or corporation, including but not limited to coin counting machines used by any coin processor required to be licensed pursuant to article twenty-seven-A of the general business law ("coin processor licensing act"), are correct and being used correctly.
6. Weigh, measure and inspect packaged commodities kept, offered or exposed for sale, sold or in the process of delivery to determine whether such packages contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this article or the rules and regulations promulgated pursuant thereto.
7. a. Upon finding a violation of the provisions of this article or the rules and regulations promulgated pursuant thereto, expeditiously cause the same to be corrected or where there is evidence of intent to defraud refer evidence of such violation to the district attorney of the county for prosecution under section forty-one of this chapter or in the absence of intent to defraud refer to the attorney for the municipality for commencement of a civil action, in the name of the municipality, to recover a civil penalty in the amounts prescribed in sections thirty-nine and forty of this chapter. A cause of action for recovery of such penalty may be released, settled or compromised by the municipal director before the matter is referred to the municipal attorney or thereafter by such attorney. Notwithstanding the provisions of section forty-five of this chapter, all moneys collected hereunder shall be retained by the municipality.
  - b. The municipal director in a city having a population of one million or more may hold a hearing to determine whether a violation of the provisions of this article has occurred. At least two weeks written notice of a hearing shall be served either personally on the individual in charge of the place of business where the alleged violation

occurred or by certified or registered mail addressed to such place of business. Such notice shall contain a concise statement of the facts constituting the alleged violation and shall set forth the date, time and place that the hearing will be held. At a hearing conducted by him or his designee, the municipal director shall be authorized to recovery any penalty imposed as the result of a finding of a violation of the provisions of this article.

8. Have authority to establish and collect fees for the inspection and testing of all weights and measures, weighing and measuring devices and systems and pricing devices and systems, and accessories related thereto within his jurisdiction. Provided, however, that the commissioner shall, after public hearing, promulgate rules and regulations fixing maximum levels for such fees and governing any other aspect thereof, including the frequency of such inspections, as he deems necessary. All fees collected by the municipal director shall be paid into the appropriate municipal treasury. No additional fees shall be assessed for pricing accuracy inspections where the retail store being inspected has previously passed two consecutive inspections during the calendar year.

9. Inspect and test fuels for conformance with applicable standards and enforce against violations of such standards.

### **Section 182. Notification and use of weighing and measuring devices**

No person shall use, for the purpose of determining the weight, quantity or price of any commodity sold, or offered or exposed for sale, any new, used or repaired weighing or measuring device or system, or accessory related thereto, unless he or she has first notified the appropriate municipal director of weights and measures in writing, or by such other means as the director may deem acceptable, of such intended use or unless such device, system or accessory has been inspected, tested and sealed. Each installation or repair shall be made in conformance with specifications, tolerances and variations as established by the commissioner.

### **Section 183. Sealing of approved devices**

1. Whenever any weights and measures official inspects any weighing or measuring device or system and finds that it corresponds with, or causes it to correspond with, the standards in his possession, and further finds that it meets the specifications, tolerances and variations allowable as established by the commissioner, he or she shall attach an appropriate official seal to such device or system, or a security seal, as appropriate for purposes of this subdivision. The term "official seal" shall mean an approval notice, decal or label affixed to a device or system indicating that the device or system has been inspected by a weights and measures official and found to be in compliance as described in this section. The term "security seal" shall mean a wire or paper seal or similar nonreusable closure or an electronic audit trail, used to indicate that modifications or adjustments have been made to a device or system.

2. No person, except a weights and measures official, shall remove any official seal or security seal from any such weighing or measuring device or system, or obliterate or deface any such seal or cause any of the foregoing, except that the device owner, or his or her agent, may remove a seal to perform repairs and maintenance, provided that he or she (a) has first notified the appropriate municipal director of weights and measures as set forth in section one hundred eighty-two of this article; (b) otherwise complies with section one hundred eighty-two of this article; and (c) in the case of a security seal, replaces it with an equivalent security seal.

3. All users of commercial weighing and measuring devices or systems shall permit the inspection and testing of the same by any weights and measures official for the purpose of emplacing or examining such seals.

### **Section 184. Condemnation, seizure or repair of false devices**

1. Whenever any weights and measures official inspects any weighing or measuring device or system and finds that it does not correspond with the standards in his possession or does not meet the specifications, tolerances and variations allowable as established by the commissioner, he shall condemn the same and either seize it or order it repaired or removed. In the case of seizure, such device or system may be disposed of only as directed by the commissioner or his authorized agent.

2. No person shall use or attempt to use, for the purpose of determining the weight, quantity or price of any commodity sold, or offered or exposed for sale, any weighing or measuring device or system to which there has been affixed or upon which there has been placed any condemnation tag unless such condemnation tag has been removed therefrom by a weights and measures official.

3. No person, except a weights and measures official, shall remove from any weighing or measuring device or system any condemnation tag which has been affixed thereto or placed thereon or obliterate, cover, obstruct or deface the same or cause any of the foregoing.

### **Section 185. Stop-use, stop-removal and removal orders**

1. Any weights and measures official shall have the power to issue stop-use orders, stop-removal orders and removal orders with respect to weights, measures, and weighing and measuring devices and systems, being or susceptible of being commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered or exposed for sale, sold or in process of delivery whenever in the course of his enforcement of the provisions of this article he deems it necessary or expedient to issue such orders.

2. It shall be unlawful for any person to use, or remove or fail to remove from the premises specified, as appropriate, any weight, measure, weighing or measuring device or system, package, commodity or other thing, contrary to the terms of any order issued under the authority of this section.

3. A "stop-use order", when used in this section, shall mean any order or written notice declaring that the device, system or other thing being used is in contravention of this article and such use shall be stopped or discontinued.

4. A "stop-removal order", when used in this section, shall mean any order or written notice declaring that the device, system, commodity or other thing being used or handled is in contravention of this article and shall be removed from use or sale for a reasonable period of time pending correction.

5. A "removal order", when used in this section, shall mean any order or written notice declaring that the device, system, commodity or any other thing being used or handled is in contravention of this article and shall be permanently removed from use or sale.

### **Section 186. Possession and use of false devices; responsibility**

1. No person shall retain in his possession any weight, measure, or weighing and measuring device or system, knowing it to be false, with intent to use it or permit to be used for determining the quantity of any commodity. Possession of the same shall be prima facie evidence of a violation of this section.

2. For the purpose of purchase, sale or service, no person shall use a false weight, measure, device or system for determining the quantity of any commodity. If the seller furnishes the weight or measure of the commodity sold, he shall not sell or deliver less of any such commodity than the quantity represented to be sold; if the buyer furnishes the weight or measure of the commodity purchased, he shall not receive or accept more of any such commodity than the quantity represented to be purchased.

### **Section 187. Oscillation of weighing devices**

No person selling, or offering for sale a commodity by net weight shall quote or state the net weight or the total selling price of such commodity unless the weight indicator of the weighing device on which it is being weighed is at rest.

### **Section 188. Service charge based on quantity**

No person shall impose a service charge which is based upon quantity in excess of the actual quantity of any commodity or article service. Nothing in this provision, however, shall prohibit the person or persons rendering the service from establishing a minimum charge therefor; such minimum charge to apply to all quantities up to and including a fixed limit regardless of the actual weight or measures of the commodity involved. In the event of the establishment of a minimum charge, the dispenser of the service shall inform the person receiving the service, by advertisement or otherwise, of the terms of such minimum charge.

## **Section 189. Method of sale of commodities generally**

All commodities, the method of sale which is not prescribed by this chapter, shall be sold, or offered or exposed for sale by net weight, standard measure or numerical count pursuant to regulations promulgated by the commissioner. Such regulations may prescribe the method of sale for specific commodities or categories of commodities and may authorize a method of sale other than those prescribed in this section whenever the commissioner finds that such other method is appropriate and consistent with the interests of consumers.

## **Section 190. Method of sale of food and food products**

1. Definition of "food" and "food product." The terms "food" and "food product," as used in this section, shall include all material, solid, liquid or mixed, whether simple or compound, used or intended for consumption by human beings or domestic animals normally kept as household pets and shall also include all substances or ingredients to be added thereto for any purpose.

2. All food and food products which are sold, offered or exposed for sale by wholesalers, packers, distributors, or jobbers shall be sold, or offered or exposed for sale by net weight, standard measure or numerical count and shall be plainly marked, in such form or manner as may be prescribed by the commissioner, by such person offering the food or food products for sale except that it shall not be necessary to so mark meat, meat products or fish, other than shellfish in natural form, provided the net weight be stated on a written invoice and on the shipping container of the meat, meat product or fish.

3. All food and food products which are sold, offered or exposed for sale at retail and which are not in containers, shall be sold, offered or exposed for sale by net weight, standard measure or numerical count under such regulations as may be prescribed by the commissioner.

4. All food and food products which are packaged or wrapped by the retailer, and all food and food products which are packaged or wrapped in random weight, measure or count in advance of being offered or exposed for sale at retail shall be accurately marked, in such form or manner as may be prescribed by the commissioner, with (a) the net weight, standard measure or numerical count; (b) the selling price per pound or unit of standard measure and (c) the total selling price. Provided that in the case of food or food products packed at one place for subsequent shipment to and sale at another, the price and weight sections of the label may be left blank, to be filled in prior to being offered or exposed for sale at retail.

5. Wherever food or food products are packaged or wrapped for sale by a retailer in advance of being sold, or offered or exposed for sale, an accurate computing scale of sufficient capacity shall be maintained. Such scale shall be placed as to be easily accessible to customers and a prominent and conspicuous sign reading "for customer use" shall be displayed on or near such scale.

6. The provisions of this section shall not apply to commodities dispensed for consumption on the premises, or to packaging or receptacles used merely for the purposes of carrying or delivering commodities or containers which comply with the provisions of this section, or to a commodity in a container if the container contains (a) in the case of a commodity not a drug or cosmetic, less than one-half ounce avoirdupois, less than one-half fluid ounce or less than seven units, (b) in the case of a drug, less than seven units, or (c) in the case of a cosmetic, less than one-fourth ounce avoirdupois, less than one-eighth fluid ounce or less than seven units. The commissioner shall by regulation prescribe comparable metric quantities for the exceptions provided by this subdivision. The exceptions involving declarations in terms of count shall be permitted only if the units of commodity can easily be counted without opening the container.

## **Section 190-a. Home food service plan sales**

1. Definitions. As used in this section, unless the context otherwise requires, the following words and phrases shall have the following meanings:

- a. "Home food service plan" means any offering for sale to a household consumer of meat or poultry or seafood or the offering of such products in combination with each other or with any other food or non-food product or service sold as a unit for a total price in the aggregate in excess of two hundred dollars.

- b. "Seller" means any person, partnership, corporation or association, however organized, engaged in the sale of food through home food service plans.
  - c. "Food spoilage protection" means any agreement, guarantee, warranty or contract offered by the seller whereby the buyer is insured or protected against loss of frozen food due to spoilage.
  - d. "Primal source" means the following cuts: (i) for beef, the primal sources are the round, flank, loin, rib, plate, brisket, chuck and shank; (ii) for veal and lamb or mutton, the primal sources are the leg, flank, loin, rack (rib) and shoulder; and (iii) for pork, the primal sources are the belly, loin, ham, spareribs, shoulder and jowl.
  - e. "Item" means each constituent part or kind of meat cut from a primal source, each kind of whole poultry, each kind of poultry part, every package of like seafood, and every package of like grocery and non-food products.
  - f. "Service charge" means the total price of the home food service plan (including, without limitation, the price of food and non-food items, membership fees and charges for delivery, cutting, wrapping, and freezing) less the total price of all food and non-food items included in the price of the plan.
2. Written contract required for home food service plans. All of the terms and conditions of a home food service plan sale shall be contained in a single written contract furnished to the buyer at the time of the execution of the contract.
3. Right of cancellation. The buyer shall have the right to cancel the home food service plan contract until midnight of the third business day after the day on which the buyer executed the contract or after the day on which the seller provided the buyer with a fully executed copy of the contract, whichever is later.
4. Disclosures required in a written contract. A seller of a home food service plan must disclose to buyers in a contract in writing, in a form approved by the commissioner of agriculture and markets, the following:
- a. the name and address of the seller;
  - b. whether substitutions of food items may be or are made; under which circumstances such substitutions will be made, the substitution values in terms of price, and whether the prospective buyer has the right to refuse such substitutions;
  - c. the terms and conditions of food spoilage protection, if any;
  - d. that the buyer is not obligated to (1) enter into an additional home food service plan contract; (2) purchase any appliance, including, but not limited to, a freezer, refrigerator-freezer, or microwave oven; (3) purchase food spoilage protection; or (4) purchase any other product from the seller in order to enter into a home food service plan;
  - e. the U.S.D.A. quality grade of the meat supplied, if so graded, and the primal source, if applicable;
  - f. an itemized list of the components of the home food service plan;
  - g. the estimated weight of each meat, poultry and seafood item offered for sale under the home food service plan, provided, however, that such estimates shall not differ from the actual weight at time of delivery by more than five percent;
  - h. the price per pound of each meat, poultry and seafood item to be supplied;
  - i. the total price of the home food service plan, the service charge and the estimated price of each meat, poultry and seafood item to be supplied;
  - j. the weight, measure or count and unit price of all other food and non-food items supplied for sale;
  - k. that at the time of delivery the buyer will be furnished with an itemized list stating the identity, primal source, if applicable, weight, measure or count, total number of packages supplied, price per pound, which shall be the

price specified in the home food service plan contract, and total price of each food and non-food item included in the sale;

1. that the buyer may cancel the contract until midnight of the third business day after the day on which the buyer executed the contract or after the day on which the seller provided the buyer with a fully executed copy of the contract, whichever is later, by giving written notice of cancellation to the seller; and that within ten days after cancellation, the seller shall return to the buyer any note or other evidence of indebtedness and shall refund to the buyer all monies received from the buyer minus the price of the actual amount of food and non-food products delivered to and not returned or tendered by the buyer following cancellation. Notice of cancellation if given by mail shall be deemed given when deposited in a mailbox properly addressed and postage prepaid.
5. Invoice at delivery required. At the time of delivery, the seller shall provide to the buyer a written invoice disclosing the name and address of the seller and the identity, primal source, if applicable, weight, measure or count, total number of packages supplied, price per pound, which shall be the price specified in the home food service plan contract, and total price of each food and non-food item included in the sale.
6. Restriction on assignment of obligation.
  - a. A seller shall not negotiate, transfer, sell or assign any note or other evidence of indebtedness, issued in connection with a home food service plan sale, to a finance company or other third party prior to midnight of the fifth business day after the day on which the buyer executed the contract or after the day on which the seller provided the buyer with a fully executed copy of the contract, whichever is later.
  - b. The assignee of any such note or other evidence of indebtedness shall be subject to all claims and defenses of the buyer against the seller arising from the sale notwithstanding any agreement to the contrary. The assignee's liability under this subdivision shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer under this section can be asserted affirmatively against or as a matter of defense to or set-off against a claim by the assignee.
7. Violations: A violation of this section shall be subject to the applicable penalties of this chapter. A violation of this section shall not constitute a misdemeanor pursuant to the provisions of section forty-one of this chapter unless such violation is committed with intent to defraud. In addition to the foregoing, an application may be made to a court or justice having jurisdiction to issue an injunction, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice, that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation.

### **Section 190-b. Sale of meat in bulk or on a gross or hanging weight basis**

1. Definitions. As used in this section, unless the context otherwise requires, the following words and phrases shall have the following meanings:
  - a. "Primal source" means the following cuts:
    - (i) for beef, the primal sources are the round, flank, loin, rib, plate, brisket, chuck and shank;
    - (ii) for veal and lamb or mutton, the primal sources are the leg, flank, loin, rack (rib) and shoulder; and
    - (iii) for pork, the primal sources are the belly, loin, ham, spareribs, shoulder and jowl.
  - b. "Seller" means any person, partnership, corporation, or association, however organized, engaged in the sale at retail of meat provided however that this section shall not apply to any seller whose total annual retail sales are less than ten thousand dollars.
  - c. "Cutting loss" means the weight of meat, fat and bone removed from the carcass, side, quarter or primal source during standard or custom cutting procedures.
  - d. "Gross or hanging weight" means the weight of any single carcass, side, quarter or primal source of meat prior to cutting or trimming such meat into any constituent part.
2. Sale of a single carcass, side, quarter or primal source of meat. Sellers of a single carcass, side, quarter or primal source of meat may sell such meat on a gross or hanging weight basis, provided such meat is derived from a single

carcass, side, quarter or primal source of meat. With respect to any other retail sale of meat, the seller shall disclose in writing to the buyer the net weight, the selling price per pound and the total selling price of each cut.

3. Disclosures required. A seller of a single carcass, side, quarter or primal source on a gross or hanging weight basis must provide to buyers, in writing, the following at the times indicated:

- a. Prior to sale:
  - i. the name and address of the seller;
  - ii. the estimated gross or hanging weight of the order;
  - iii. the U.S.D.A. quality grade of the meat to be supplied, if so graded;
  - iv. the estimated total price of the order;
  - v. the estimated cutting loss on the order;
  - vi. a list, by name and estimated count, of each cut to be derived from each primal source;
  - vii. the price per pound of the carcass, side, quarter or primal source before cutting and wrapping;
  - viii. additional costs of cutting, wrapping and freezing, if any; and
  - ix. that the buyer may keep the cutting loss.
- b. At the time of delivery
  - i. the name and address of the seller;
  - ii. the total delivered weight of the meat;
  - iii. the cutting loss;
  - iv. a list, by name and count, of each cut derived from each primal source.
- c. Exemption. This subdivision shall not apply to the sale of any carcass, side, quarter or primal source of meat which individually has a gross or hanging weight of fifty pounds or less.

4. Violations: A violation of this section shall be subject to the applicable penalties of this chapter. A violation of this section shall not constitute a misdemeanor pursuant to the provisions of section forty-one of this chapter unless such violation is committed with intent to defraud. In addition to the foregoing, an application may be made to a court or justice having jurisdiction to issue an injunction, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice, that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation.

### **Section 191. Standardized packaging**

1. For the purpose of this section:
  - a. "Food store" shall mean a store selling primarily food at retail, which store is not primarily engaged in the sale of food for consumption on the premises.
  - b. "Consumer commodities" shall mean:
    - (1) food, including all material, solid, liquid, or mixed, whether simple or compound, used or intended for consumption by human beings or domestic animals normally kept as household pets and all substances or ingredients to be added thereto for any purpose;
    - (2) napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, disposable plates and cups;
    - (3) detergents, soaps and other cleansing agents; and
    - (4) non-prescription drugs, female hygiene products, and toiletries.
  - c. "Package" shall mean any container or wrapper in which a consumer commodity is enclosed and offered or exposed for sale in a food store.
  - d. "Package size" shall mean the physical dimensions of a container which encloses a consumer commodity.

- e. "Quantity" shall mean the net weight, volume, numerical count, area or linear measure, as appropriate, of the contents of a package.
- f. "Person" shall mean any individual, partnership, corporation, association, or firm.

2. Upon the petition of a substantial number of each group of manufacturers, packers, distributors, and retailers of any consumer commodity packaged or wrapped in advance of being offered or exposed for sale in a food store, the commissioner may hold a public hearing upon due notice to consider rules and regulations prescribing standard quantities or packaged sizes by which any such commodity shall be sold, or offered or exposed for sale in a food store. If the commissioner finds that the proposed standardization will reduce an undue proliferation of package sizes and facilitate the ability of consumers to make price comparisons, he may adopt and promulgate such rules and regulations with respect to such commodity unless a voluntary product standard has been established for such commodity pursuant to the federal fair packaging and labelling act. In addition to any such commodities, the commissioner may by rule and regulation, and without any public hearing, prescribe the existing standard quantities or package sizes for milk, cream, melloream, frozen desserts, flours and meals; thereafter the commissioner may prescribe standard quantities or package sizes for such commodities, whether or not a voluntary product standard has been established, without petition but shall hold a public hearing prior to the promulgation thereof.

3. No person shall sell, offer or expose for sale in a food store any consumer commodity for which the commissioner has prescribed, pursuant to subdivision two herein, a standardized quantity or package size except in a package or by a quantity which conforms to that prescribed by the commissioner.

4. The sale of any commodity whose net quantity or package size as offered for sale is standardized as provided in this section shall be exempt from the unit pricing provisions of section two hundred fourteen-h of this chapter.

## **Section 192. Sale and delivery of petroleum products**

1. No device shall be used for the purpose of dispensing and measuring petroleum products unless the owner of such device has complied with section one hundred eighty-two of this article.

- 2. a. Devices equipped with automatic temperature compensation shall be used only if the device is used exclusively for wholesale transactions.
- b. Automatic and non-automatic temperature compensation shall not be applied to retail sales of petroleum products.

3. Any person owning or operating any vehicle used for the delivery of any petroleum product and carrying any weighing, measuring or pricing device used in relation thereto shall submit such vehicle for inspection and testing to the weights and measures official of the municipality in which such vehicle is principally stored or kept. Such submission shall be done at least annually and at a location designated by the municipal director.

4. Except where otherwise agreed to by the parties in writing, all petroleum products delivered from a vehicle shall be measured by meter or other measuring device. Where petroleum products delivered from a vehicle are measured by meter, the seller shall provide the buyer with a mechanically prepared metered document which shall show the actual quantities of all grades of petroleum products delivered. Where petroleum products delivered from a vehicle are not measured by meter, the seller shall provide the buyer with a mechanically prepared metered document which shall show the actual quantities of all grades of petroleum products transferred to the vehicle. The delivery ticket shall also contain the name and address of the seller and buyer, the date delivered, price per unit measure and total price; provided, however, that such delivery ticket need not set forth the total price if within five days after delivery the seller provides the buyer with a written statement setting forth all the foregoing information including the total price. All deliveries of home heating fuel oil shall be measured by meter, the delivery tickets shall be serially numbered, and a copy retained by the seller for a period of one year.

- 5. a. It shall be unlawful for any person, firm or corporation to sell or offer for sale at retail for use in internal combustion engines in motor vehicles or motorboats any motor fuel unless such seller shall:
  - (i) post and keep posted on the dispensing device from which such motor fuel is sold or offered for sale a sign or placard, at least twelve inches in height and at least twelve inches in width, stating clearly and legibly

with the whole cent numerals at least nine inches in height and at least two inches in width, the selling price per gallon of such motor fuel; or

- (ii) where such individual pump or dispensing device dispenses more than two differently priced grades of motor fuel, only the highest and lowest selling price per gallon of such motor fuel dispensed therefrom must be posted thereon in conformance with all others provisions of this subdivision; or
- (iii) where a multiple product dispensing device is capable of dispensing multiple products at multiple prices, then the selling price per gallon may be posted thereon with numerals at least one-half that height and one-half that width required by subparagraph (i) of this paragraph, although numerals representing tenths of a cent may be displayed at no less than one-half those dimensions which disclose the selling price per gallon of such motor fuel dispensed therefrom.

The signs and selling prices shall be posted so as to be clearly visible to the driver of an approaching motor vehicle or motorboat. The name, trade name, brand, mark or symbol, and grade of quality classification, if any of such motor fuel shall be permanently imprinted on said motor fuel dispensing device. The provisions of this subdivision shall not apply to a city, county, town or village which has already enacted and continues in effect a local law, ordinance, rule or regulation in substantial conformity with this subdivision. The provisions of this subdivision shall be enforced in the counties outside the city of New York by the county or city director of weights and measures, as the case may be, and in the city of New York by the department of consumer affairs.

- b. Any person who shall violate the provisions of this subdivision shall be liable to a civil penalty of not more than one hundred dollars and for any subsequent violation shall be liable to a civil penalty of not more than five hundred dollars.

6. Gasoline Stations: Air pumps required.

- a. Definition as used in this subdivision: "Dealer" shall mean any person owning or operating a premise or facility with four or more gas dispensing nozzles for the retail sale of motor fuels for use in motor vehicle.
- b. Any dealer must provide on the premises where motor fuel is sold at retail for use in motor vehicles a functioning motor driven air compressor capable of inflating automobile tires for use by customers during hours in which such station is open for business.
- c. Wilful failure to comply with the provisions of this subdivision shall subject a dealer to a civil penalty of up to twenty-five dollars for each day such failure occurs. If the failure to comply results from the breakdown of the air compressor, the failure to repair within a reasonable time shall constitute wilful conduct.

**Section 192-a. Fuel octane labelling requirements.**

1. Automotive fuel ratings, certification and posting for automotive gasoline. No person shall distribute, sell, or offer for sale any automotive gasoline unless it meets such rating, certification and posting requirements as may be established by regulations duly promulgated by the commissioner. Any such requirements shall be the same as the applicable provisions of Title 15 of the United States Code and any rule adopted pursuant thereto. For purposes of this section, automotive gasoline shall mean an automotive spark-ignition engine fuel, which includes, but is not limited to gasohol, reformulated gasoline and oxygenated gasoline.

2. Regular gasoline. As used in this section, "regular gasoline" means unleaded gasoline, as defined in section one hundred ninety-two-b of this article, with an octane rating  $(R+M)/2$  of eighty-seven, as defined in Title 15 of the United States Code and rules adopted pursuant thereto. The term "regular", either by itself or in combination with any other term or name, shall not be used in connection with the sale, offering for sale, advertising or marketing of unleaded gasoline at retail that has a posted octane rating other than eighty-seven.

3. Inspection, investigation; recordkeeping.

- (a) The commissioner or the commissioner's designee, or the director of a municipal consumer affairs office or the director's designee, and/or a municipal director of weights and measures or the director's designee, upon presentation of appropriate credentials, shall be authorized to enter during regular business hours upon or

through the business premises of any person who sells or offers for sale automotive gasoline or other petroleum products for use in motor vehicles or any place where such gasoline or petroleum product is stored, for the purposes of making inspections, taking samples and conducting tests to determine compliance with the provisions of this section or any rules or regulations promulgated hereunder and under section one hundred seventy-nine of this chapter.

- (b) Whenever the commissioner, or the director of a municipal consumer affairs office and/or a municipal director of weights and measures, has reason to believe that a violation of this section or any rule or regulation adopted pursuant to this section has occurred, he or she shall be authorized to make such investigation as he or she shall deem necessary, and to the extent necessary for this purpose, he or she may examine any person and may compel the production of all relevant records.
- (c) Any person subject to the provisions of this section shall maintain such written records as the commissioner, or the director of a municipal consumer affairs office and/or a municipal director of weights and measures, may prescribe by regulation.

#### 4. Violations and penalties.

- (a) (1) Upon finding that a person has violated any of the provisions of this section, or of any rule or regulation promulgated thereunder, the commissioner or the director of a municipal consumer affairs office, or a municipal director of weights and measures, or a representative of any one of such officials, may issue and cause to be served upon such person an order directing the person to cease and desist from engaging in the prohibited activity. Upon the issuance of such an order, the person who is the subject of the order shall be provided written notice of the violation or violations charged and notice of such person's right to appear, in person or by attorney, for a hearing before the commissioner or director, as appropriate, or his or her designee, to be heard with respect to the violation or violations alleged. In the event that the imposition of penalties is to be considered at such hearing, the notice shall set forth the maximum penalties permissible under this section and the grounds for the penalties. Such notice shall further set forth that such person must notify, in writing, the commissioner or a director, as appropriate, within thirty days of the issuance of the notice of his or her intent to contest the violation or violations alleged; failure to so notify shall constitute a waiver of such person's right to a hearing on the violation or violations alleged. Upon receipt of such person's notice of intent to contest the violation or violations alleged, the commissioner or a director, as appropriate, shall schedule a hearing within a reasonable period of time. Following a hearing, the commissioner or a director, as appropriate, shall issue a written determination setting forth his or her findings, including any penalties imposed and cause such findings to be served upon such person by first class mail. The order shall become final upon the expiration of the time allowed for filing any administrative appeal which may be available.
  - (2) Any person who violates a final order of the commissioner, or of the director of a municipal consumer affairs office or a municipal director of weights and measures, as the case may be, shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars for each violation, notwithstanding the penalty provisions of section forty of this chapter which shall not apply to a violation of such order.
- (b) Any person who violates the provisions of this section or any rules or regulations promulgated thereunder with actual knowledge or knowledge fairly implied on the basis of objective circumstances that the act or practice underlying the violation is unfair or deceptive shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars; provided, however, that in order for any retailer to be held liable under this paragraph for violating any of the provisions of this section relating to octane rating, certification or posting, such retailer shall be shown to have had actual knowledge that the act or practice underlying the violation is unfair or deceptive. Any person who engages in a particular act or practice after receiving written notice from the commissioner or the director of a municipal consumer affairs office, or a municipal director of weights and measures, or a representative of any one of such officials, that such act or practice constitutes a violation of this section, shall be presumed to have actual knowledge that such act or practice is unfair or deceptive. Such presumption shall be rebuttable by a preponderance of credible evidence which shows that such person did not have actual knowledge that such act or practice is unfair or deceptive. In determining the amount of any civil penalty imposed under this paragraph, the following shall be considered: the degree of

culpability; any history of prior such conduct; ability to pay; effect on ability to continue to do business; and such other matters as justice may require.

- (c) In the case of a violation through continuing failure to comply with any of the provisions of this section, any rules or regulations promulgated thereunder, or any order of the commissioner, or of the director of a municipal consumer affairs office and/or a municipal director of weights and measures, issued pursuant to this subdivision, each day of the continuance of such failure shall be treated as a separate violation.
- (d) The civil penalties prescribed by the provisions of this subdivision may be imposed by the commissioner, or by the director of a municipal consumer affairs office or a municipal director of weights and measures, as the case may be, after due notice and an opportunity to be heard have been provided for any violation which has not been noticed for a hearing under subparagraph one of paragraph (a) of this subdivision, or may be recovered in a civil action in the name of the state, or the municipality, as the case may be, commenced in a court of competent jurisdiction. A right of action for the recovery of a liability for the civil penalties incurred as provided in this section may be released, settled or compromised by the commissioner or the director of a municipal consumer affairs office or municipal director of weights and measures before the matter is referred to the attorney general as provided in section forty-four of this chapter, or by the attorney for the municipality, as the case may be, and thereafter may be released, settled or compromised by the attorney general or the attorney for the municipality, as the case may be, either before or after an action is brought to recover such penalty. The commissioner or a director of a municipal consumer affairs office or a municipal director of weights and measures may apply to a court of appropriate jurisdiction for an injunction to restrain any person subject to the provisions of this section from the further violation of such provisions or for such other relief as the court deems proper. Any plaintiff seeking such relief shall not be required to furnish security and the costs of the application may be granted in the discretion of the court.
- (e) Notwithstanding the foregoing, the commissioner, or the director of a municipal consumer affairs office and/or a municipal director of weights and measures, as the case may be, in a manner consistent with the rules, regulations or policies of such commissioner or director or directors, as the case may be, shall cause to be published once each month the name and business location of any person, firm or corporation that has been found to have violated any provision of this section during the month immediately preceding.
- (f) The provisions of sections thirty-nine, forty and forty-one of this chapter shall not apply to a violation described in this subdivision.

5. Concurrent enforcement by municipalities. The provisions of this section and the regulations promulgated thereunder may be enforced concurrently by the director of a municipal consumer affairs office and/or a municipal director of weights and measures, except that nothing in this section or in subdivision three, twelve or nineteen of section one hundred seventy-nine of this article or in section one hundred ninety-two-b or one hundred ninety-two-c or one hundred ninety-two-d of this article shall be construed to prohibit a political subdivision of the state from also continuing to implement and enforce any local law and regulations that were in effect prior to the date this section took effect, and any subsequent amendments thereto, provided such local law and regulations or amendments thereto are not inconsistent with requirements imposed by the provisions of this section or by regulations adopted pursuant to this section. Notwithstanding the provisions of section forty-five of this chapter, all moneys collected hereunder at the instance of a municipal enforcement officer shall be retained by the municipality.

6. Authority of commissioner of environmental conservation to prevent or decrease pollution unimpaired. Nothing in this section shall be deemed to limit or restrict the authority of the commissioner of environmental conservation to adopt rules and regulations that affect the composition, storage, transport, handling or commerce of petroleum products for the purpose of preventing or decreasing pollution pursuant to the environmental conservation law.

7. Rules and regulations. The commissioner shall have the authority to promulgate such rules and regulations as the commissioner shall deem necessary to effectuate the purposes of this section, consistent with its provisions.

### **Section 192-b. Fuel lead content labelling and requirements.**

1. For purposes of this section, the following terms shall have the following meanings:

- (a) "Distributor" shall mean any person who transports or stores or causes the transportation or storage of gasoline at any point between any plant at which gasoline is produced and any retail outlet or facility of a wholesale purchaser-consumer.
- (b) "Gasoline" shall mean any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.
- (c) "Lead additive" shall mean any substance containing lead or lead compounds.
- (d) "Leaded gasoline" shall mean gasoline which is produced with the use of any lead additive or which contains more than five one hundredths of a gram of lead per gallon or more than five one thousandths of a gram of phosphorus per gallon.
- (e) "Refiner" shall mean any person who owns, leases, operates, controls or supervises a plant at which gasoline is produced.
- (f) "Reseller" shall mean any person who purchases gasoline identified by the corporate, trade or brand name of a refiner from such refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumers displaying the refiner's brand, and whose assets or facilities are not substantially owned, leased or controlled by such refiner.
- (g) "Retail outlet" shall mean any establishment at which gasoline is sold or offered for sale for use in motor vehicles.
- (h) "Retailer" shall mean any person who owns, leases, operates, controls, or supervises a retail outlet.
- (i) "Unleaded gasoline" shall mean gasoline which is produced without the use of any lead additive and which contains not more than five one hundredths of a gram of lead per gallon and not more than five one thousandths of a gram of phosphorus per gallon.
- (j) "Wholesale purchaser-consumer" shall mean any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least five hundred fifty gallon capacity substantially under the control of that organization.

2. No distributor shall sell or transfer to any other distributor, retailer or wholesale purchaser-consumer any gasoline which is represented to be unleaded unless such gasoline meets the defined requirements for unleaded gasoline set forth in subdivision one of this section.

3. No retailer or employee or agent of a retailer, and no wholesale purchaser-consumer or employee or agent of a wholesale purchaser-consumer, shall sell, dispense or offer for sale gasoline represented to be unleaded unless such gasoline meets the defined requirements for unleaded gasoline set forth in subdivision one of this section.

4. Every retailer and wholesale purchaser-consumer shall affix to each gasoline pump stand in a location so as to be readily visible to the employees of such retailer or wholesale purchaser-consumer and to person operating motor vehicles into which gasoline is to be dispensed a permanent legible label as follows: (i) for gasoline pump stands containing pumps for introduction of unleaded gasoline into motor vehicles, the label shall state: "Unleaded gasoline; and (ii) for gasoline pump stands containing pumps for introduction of leaded gasoline into motor vehicles, the label shall state: "Contains lead anti-knock compounds"; provided, however, that where more than one grade of unleaded gasoline is offered for sale at a retail outlet, compliance with this subdivision is required for only one grade.

5. Notwithstanding any other provisions of law to the contrary, in any proceeding to adjudicate a violation of subdivision four of this section, a retailer or wholesale purchaser-consumer may be found not to be liable for violation thereof where it is shown that more than one grade of gasoline is dispensed from a gasoline pump or pump stand and it is demonstrated to the satisfaction of the commissioner that an alternative system of labeling furthers the objectives of such subdivision.

6. Any violation of subdivision three of this section by a retailer or wholesale purchaser-consumer shall also be deemed a violation by:
- (a) the reseller, if any, and the refiner, where the corporate, trade or brand name of such refiner or any of its marketing subsidiaries appears on the pump stand or is displayed at the retail outlet or wholesale purchaser-consumer facility from which the gasoline was sold, dispensed or offered for sale. Except as provided in subdivision seven of this section, the refiner shall be deemed in violation of subdivision three of this section irrespective of whether any other refiner, distributor, retailer or wholesale purchaser-consumer may have caused or permitted the violation; or
  - (b) the distributor who sold such retailer or wholesale purchaser-consumer gasoline contained in the storage tank which supplied the pump from which the gasoline was sold, dispensed or offered for sale which gave rise to the violation, where corporate, trade or brand name of a refiner or any of its marketing subsidiaries does not appear on the pump stand and is not displayed at the retail outlet or wholesale purchaser-consumer facility from which the gasoline was sold, dispensed or offered for sale.
7. (a) In any case in which a retailer or wholesale purchaser-consumer and any refiner or distributor would be in violation or be deemed in violation of subdivision three of this section, the retailer or wholesale purchaser-consumer shall not be liable if he or she can demonstrate by a preponderance of the evidence that the violation was not caused by such retailer or wholesale purchaser-consumer or his or her employee or agent.
- (b) In any case in which a retailer or wholesale purchaser-consumer would be in violation of subdivision three of this section, and a reseller, if any, and any refiner would be deemed in violation under paragraph (a) of subdivision six of this section, the refiner shall not be deemed in violation if he or she can demonstrate by a preponderance of the evidence:
- (1) that the violation was not caused by such refiner or his or her employee or agent, and
  - (2) that the violation was caused by an act in violation of any law, other than the provisions of this section, or an act of sabotage, vandalism, or deliberate commingling of leaded and unleaded gasoline, whether or not such acts are violations of law in the jurisdiction where the violation of the requirements of this section occurred, or
  - (3) that the violation was caused by the action of a reseller or a retailer supplied by such reseller, in violation of a contractual undertaking imposed by the refiner on such reseller designed to prevent such action, and despite reasonable efforts by the refiner to insure compliance with such contractual obligation, such as periodic sampling, or
  - (4) that the violation was caused by the action of a retailer who is supplied directly by the refiner and not by a reseller, in violation of a contractual undertaking imposed by the refiner on such retailer designed to prevent such action, and despite reasonable efforts by the refiner to insure compliance with such contractual obligation, such as periodic sampling, or
  - (5) that the violation was caused by the action of a distributor or other refiner subject to a contract with the refiner for transportation of gasoline from a terminal to a distributor, retailer or wholesale purchaser-consumer, in violation of a contractual undertaking imposed by the refiner on such distributor designed to prevent such action, and despite reasonable efforts by the refiner to insure compliance with such contractual obligation, such as periodic sampling, or
  - (6) that the violation was caused by a distributor (such as a common carrier) or other refiner not subject to a contract with the refiner but engaged by him or her for transportation of gasoline from a terminal to a distributor, retailer or wholesale purchaser-consumer, despite reasonable efforts by the refiner to prevent such action, such as specification or inspection of equipment, or
  - (7) that the violation occurred at a wholesale purchaser-consumer facility; provided, however, that if such wholesale purchaser-consumer was supplied by a reseller, the refiner must demonstrate that the violation could not have been prevented by such reseller's compliance with a contractual undertaking imposed by the refiner on such reseller as provided in subparagraph three of this paragraph.

- (8) For purposes of subparagraphs two through six of this paragraph, the term "was caused" means that the refiner must demonstrate by a preponderance of the evidence that the violation was caused by another.
- (c) In any case in which a retailer or wholesale purchaser-consumer would be in violation of subdivision three of this section, and a reseller and any refiner would be deemed in violation under paragraph (a) of subdivision six of this section, the reseller shall not be deemed in violation if he or she can demonstrate by a preponderance of the evidence that the violation was not caused by such reseller or his or her employee or agent.
- (d) In any case in which a retailer or wholesale purchaser-consumer would be in violation of subdivision three of this section, and any distributor would be deemed in violation under paragraph (b) of subdivision six of this section, the distributor will not be deemed in violation if he or she can demonstrate by a preponderance of the evidence that the violation was not caused by such distributor or his or her employee or agent.
8. (a) The commissioner or the commissioner's designee, or the director of a municipal consumer affairs office or the director's designee, and/or a municipal director of weights and measures or the director's designee, upon presentation of appropriate credentials, shall be authorized to enter during regular business hours upon or through the business premises of any person who sells or offers for sale automotive gasoline or other petroleum products for use in motor vehicles or any place where such gasoline or petroleum product is stored, for the purposes of making inspections, taking samples and conducting tests to determine compliance with the provisions of this section or any rules or regulations promulgated hereunder and under section one hundred seventy-nine of this chapter.
- (b) Whenever the commissioner, or the director of a municipal consumer affairs office and/or a municipal director of weights and measures, has reason to believe that a violation of this section or any rule or regulation adopted pursuant to this section has occurred, he or she shall be authorized to make such investigation as he or she shall deem necessary, and to the extent necessary for this purpose, he or she may examine any person and may compel the production of all relevant records.
- (c) Any person subject to the provisions of this section shall maintain such written records as the commissioner, or the director of a municipal consumer affairs office and/or a municipal director of weights and measures, may prescribe by regulation.
9. (a) Any person who violates the provisions of this section or any rules or regulation promulgated thereunder shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars.
- (b) In the case of a violation through continuing failure to comply with any of the provisions of this section or any rules or regulations promulgated thereunder, each day of the continuance of such failure shall be treated as a separate violation.
- (c) The civil penalties prescribed by the provisions of this subdivision may be imposed by the commissioner, or by the director of a municipal consumer affairs office or a municipal director of weights and measures, as the case may be, after due notice and an opportunity to be heard have been provided or may be recovered in a civil action in the name of the state, or the municipality, as the case may be, commenced in a court of competent jurisdiction. A right of action for the recovery of a liability for the civil penalties incurred as provided in this section may be released, settled or compromised by the commissioner or the director of a municipal consumer affairs office or municipal director of weights and measures before the matter is referred to the attorney general as provided in section forty-four of this chapter, or by the attorney for the municipality, as the case may be, and thereafter may be released, settled or compromised by the attorney general or the attorney for the municipality, as the case may be, either before or after an action is brought to recover such penalty. The commissioner or a director of a municipal consumer affairs office or a municipal director of weights and measures may apply for an injunction to restrain any person subject to the provisions of this section from the further violation of such provisions or for such other relief as the court deems proper. Any plaintiff seeking such relief shall not be required to furnish security and the costs of the application may be granted in the discretion of the court.
- (d) Notwithstanding the foregoing, the commissioner, or the director of a municipal consumer affairs office and/or a municipal director of weights and measure, as the case may be, in a manner consistent with the rules, regulations or policies of such commissioner or director or directors, as the case may be, shall cause to be

published once each month the name and business location of any person, firm or corporation that has been found to have violated any provision of this section during the month immediately preceding.

- (e) The provisions of sections thirty-nine, forty and forty-one of this chapter shall not apply to a violation described in the subdivision.

10. The provisions of this section and the regulations promulgated thereunder may be enforced concurrently by the director of a municipal consumer affairs office and/or a municipal director of weights and measures, except that nothing in this section or in subdivision three, twelve or nineteen of section one hundred seventy-nine of this article or in section one hundred ninety-two-a or one hundred ninety-two-c or one hundred ninety-two-d of this article shall be construed to prohibit a political subdivision of the state from also continuing to implement and enforce any local law and regulations that were in effect prior to the date this section took effect, and any subsequent amendments thereto, provided such local law and regulations or amendments thereto are not inconsistent with requirements imposed by the provisions of this section or by regulations adopted pursuant to this section. Notwithstanding the provisions of section forty-five of this chapter, all moneys collected hereunder at the instance of a municipal enforcement officer shall be retained by the municipality.

11. Nothing in this section shall be deemed to limit or restrict the authority of the commissioner of environmental conservation to adopt rules and regulations that affect the composition, storage, transport, handling or commerce of petroleum products for the purpose of preventing or decreasing pollution pursuant to the environmental conservation law.

12. The commissioner shall have the authority to promulgate such rules and regulations as the commissioner shall deem necessary to effectuate the purposes of this section, consistent with its provisions.

### **Section 192-c. Motor fuel standards and labelling; cetane rating of diesel fuel; alcohol content.**

1. As used in this section, the following terms shall have the following meanings:

- a. "Co-solvent" means an alcohol with a higher molecular weight than methanol which is blended with methanol to prevent phase separation in gasoline.
- b. "Diesel motor fuel" means any fuel sold in this state and for use in diesel engines which is commercially known or offered for sale as diesel motor fuel.
- c. "Cetane rating" means the property of a diesel motor fuel expressed as a number determined pursuant to a method adopted by the American Society of Testing and Materials, concerning the fuel's ignition properties.
- d. "Gasoline" means any fuel sold in this state for use in internal combustion engines which is commercially known or offered for sale as gasoline.
- e. "Refiner" means a person, firm or corporation who owns, leases, operates, controls or supervises a commercial entity producing gasoline or diesel motor fuel.
- f. "Distributor" means any person, firm or corporation who purchases, transports, stores or causes the transportation or storage of gasoline or diesel motor fuel at any point between commercial entities.
- g. "Reseller" means any person who purchases gasoline identified by the corporate, trade or brand name of a refiner from such refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumers displaying the refiner's brands, and whose assets or facilities are not substantially owned, leased or controlled by such refiner.
- h. "Retailer" means a person, firm or corporation who owns, leases, operates, controls or supervises a commercial entity at which gasoline or diesel motor fuel is sold or offered for sale to the general public.
- i. "Wholesale purchaser-consumer" means any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank which has a capacity of five hundred fifty gallons or more and is substantially under the control of that organization.

- j. "Ultimate purchaser" means the first person who purchases gasoline for purposes other than resale.
2. No refiner, distributor, reseller or retailer shall transfer, sell, dispense or offer any grade of diesel motor fuel for sale in this state unless said diesel motor fuel meets the standards and specifications established for such product by regulations promulgated by the commissioner or by the commissioner of environmental conservation, after due notice and public hearing. No refiner, distributor, reseller or retailer shall transfer, sell, dispense or offer gasoline for sale in this state unless said gasoline meets the standards and specifications, other than those relating to octane and lead content, established for such product by regulations promulgated by the commissioner or by the commissioner of environmental conservation, after due notice and public hearing.
3. (a) A refiner, distributor or reseller shall not transfer, sell or dispense gasoline for sale in this state without delivering to the purchaser a bill, invoice or other instrument evidencing the transaction which shall indicate:
- (i) the presence of methanol and co-solvent, each as a percentage of the total volume, if the quantity of methanol exceeds three-tenths of one percent; and
  - (ii) the presence of ethanol, as a percentage of the total volume, if such quantity exceeds one percent of the total volume.
- b. A refiner, distributor or reseller shall not transfer, sell or dispense diesel motor fuel in this state without delivering to the purchaser a bill, invoice or other instrument evidencing the transaction which shall indicate the cetane rating of such diesel motor fuel.
- c. For the purposes of this section, the instrument evidencing the transaction shall be on such form as may be required by the commissioner. The commissioner shall consult with the department of taxation and finance and to the extent practicable, the form used for certification of prepayment of the sales tax and payment of motor fuel tax shall be modified and adapted for this purpose, such that said form shall indicate the brand, type and quality of each product delivered.
4. a. A refiner, distributor or reseller shall not transfer, sell, dispense, or offer gasoline or diesel motor fuel for sale in this state to a retailer unless the refiner, distributor or reseller provides to the retailer the materials necessary to comply with the posting requirements contained in this section.
- b. It shall be a defense to any violation of paragraph a of this subdivision that a refiner, distributor or reseller, if acting in good faith, had reasonable cause to believe that the retailer had the materials necessary to comply with the posting requirements contained in this section. No common carrier shall be held liable for any violation of paragraph a of this subdivision to the extent that the materials necessary to comply with such posting requirements were not transferred to him or her or his or her agent along with such gasoline or diesel motor fuel.
- c. Each retailer shall record, for each day during which gasoline or diesel motor fuel is sold or offered for sale to the general public the cumulative gallon meter readings for each retail petroleum dispensing device and the volume contained in each gasoline and diesel motor fuel storage tank. These records shall be maintained for a period of one year.
5. a. A retailer or reseller shall not transfer, sell, dispense or offer gasoline for sale in this state if it contains more than:
- (i) one percent by total volume of ethanol unless the retail petroleum dispensing device displays a sign with at least one-quarter inch block letters on a contrasting background, reading "Contains.....% Ethanol", the blank being filled in with the maximum percentage of ethanol in the gasoline; and
  - (ii) three-tenths of one percent of total volume of methanol unless the retail petroleum dispensing device displays a sign with at least one-quarter inch block letter on a contrasting background reading "Contains.....% Methanol" and "Contains....% Co-Solvent", the blanks being filled in with the maximum percentage of methanol and minimum percentage of co-solvent in the gasoline.

- b. A retailer shall not transfer, sell, dispense or offer diesel motor fuel for sale in the state unless the retail petroleum dispensing device displays a sign disclosing the minimum cetane rating.
6. No refiner, distributor, reseller or retailer shall store, sell, transfer, dispense or offer for sale gasoline or diesel motor fuel in this state without having in his or her possession a copy of the bill, invoice, or other written instrument evidencing the transaction by which such refiner, distributor, reseller or retailer came into possession of the gasoline or diesel motor fuel; provided, however, that this requirement shall not apply to refiners with respect to gasoline or diesel motor fuel which such refiner has produced from crude oil.
7.
  - a. Except as otherwise provided, any retailer, reseller or distributor charged with a violation under this section may plead and prove by a preponderance of the evidence that the violation was not caused by him or her or his or her agent or employee as an affirmative defense to such charge.
  - b. Notwithstanding any other provision of this section, a common carrier transporting gasoline or diesel motor fuel shall be deemed to be liable under the provisions of subdivision two of this section only if it is proved by a preponderance of the evidence that a violation was caused by him or her or his or her agent or employee.
8.
  - a. The commissioner or his authorized representative, upon presentation of appropriate credentials, shall have the right to enter during regular business hours upon or through the premises or property of any refiner, distributor, reseller or retailer, and shall have the right to make inspections, take samples of gasoline and diesel motor fuel being stored, offered for sale or in the process of being delivered or transported, and conduct tests during normal business hours to determine compliance with this section.
  - b. The commissioner may require a refiner, distributor, reseller or retailer to report information regarding the receipt, transfer, delivery or sale of gasoline and diesel motor fuel and to allow the reproduction of that information except that the refiner, distributor, reseller or retailer shall not be required to provide information not maintained in the normal course of business, except as otherwise required in this section. A refiner, distributor, reseller or retailer shall preserve information regarding the receipt, transfer, delivery, or sale of gasoline and diesel motor fuel for one year.
9. Any refiner, distributor, reseller or retailer who or which violates this section shall be liable for a civil penalty not to exceed ten thousand dollars for each violation, and for the first violation not to be less than two hundred fifty dollars, and for the second violation not to be less than one thousand dollars. In the case of a violation through continuing failure to comply with any of the provisions of this section, or any rules or regulations promulgated thereunder, each day of the continuance of such failure shall be treated as a separate violation. Provided, however, that the penalty for any violation of paragraph c of subdivision four of this section for failure to keep the required records shall be a maximum of two hundred dollar civil penalty for the first violation, and a maximum four hundred dollar civil penalty for the second and subsequent violations. A right of action for the recovery of a liability for the civil penalties incurred as provided in this section may be released, settled or compromised by the commissioner or the director of a municipal consumer affairs office or a municipal director of weights and measures before the matter is referred to the attorney general as provided in section forty-four of this chapter, or by the attorney for the municipality, as the case may be, and thereafter may be released, settled or compromised by the attorney general or the attorney for the municipality, as the case may be, either before or after an action is brought to recover such penalty. The commissioner or a director of a municipal consumer affairs office or a municipal director of weights and measures may apply to a court of appropriate jurisdiction for an injunction to restrain any person subject to the provisions of this section from the further violation of such provisions or for such other relief as the court deems proper. Any plaintiff seeking such relief shall not be required to furnish security and the costs of the application may be granted in the discretion of the court. The provisions of sections thirty-nine, forty and forty-one of this chapter shall not apply to a violation described in this subdivision.
10. Whenever the commissioner or an authorized representative of the commissioner shall find that a refiner, distributor, reseller or retailer has transferred, sold, dispensed or offered gasoline or diesel motor fuel for sale in this state in violation of this section, such commissioner or his authorized representative may exercise any remedies authorized by section one hundred eighty-five of this article. Any refiner, distributor, reseller or retailer violating an order issued pursuant to this subdivision shall be subject to an additional civil penalty not to exceed five thousand dollars, notwithstanding the penalty provisions of section forty of this chapter which shall not apply to a violation of such order.

11. The provisions of this section and the regulations promulgated hereunder may be enforced concurrently by the director of a municipal consumer affairs office and/or a municipal director of weights and measures. Notwithstanding the provisions of section forty-five of this chapter, all moneys collected hereunder shall be retained by the municipality.

12. Nothing in this section shall be deemed to limit or restrict the authority of the commissioner of environmental conservation to adopt rules and regulations that affect the composition, storage, transport, handling or commerce of petroleum products for the purpose of preventing or decreasing pollution pursuant to the environmental conservation law.

13. The commissioner shall have the authority to promulgate such rules and regulation as the commissioner shall deem necessary to effectuate the purposes of this section, consistent with its provisions.

### **Section 192-e. Sale and delivery of liquefied petroleum gas**

1. Definition. For the purpose of this section "liquefied petroleum gas" shall mean any material or substance which is predominantly composed of any of the following hydrocarbons or mixtures of the same: propane, propylene, butane, normal or iso-, and butylene.

2. Liquefied petroleum gas shall be sold or offered for sale by avoirdupois net weight, by liquid measure based on the standard United States gallon of two hundred and thirty-one cubic inches, by cubic feet based on the standard cubic foot of one thousand seven hundred and twenty-eight cubic inches, or by the appropriate units in the metric system, or multiple or decimal subdivisions of those units as determined by the commissioner.

3. When liquefied petroleum gas is sold, offered or exposed for sale by package weight, variations at the rate of one percent under the specified net weight of the container are permitted in individual containers, but the average weight of not less than twelve containers shall not be less than the marked net weight of the containers.

4. Containers used where the gas content is sold by package weight must have the tare weight plainly and conspicuously marked on the container or on permanently attached appurtenances, and the net contents plainly and conspicuously marked on the container or on a tag or other type of label firmly attached thereto. Tare weight shall be construed to be the weight of the container, valve and other permanent attachment but does not include the valve-protecting cap; provided, however, that disposable containers weighing five pounds or less when filled shall be exempt from the tare weight marking requirements.

5. When liquefied petroleum gas is sold or delivered in package form and the cylinder or container is connected to the consumer's apparatus, such cylinder or container shall neither be disconnected nor removed from the premises before it becomes empty, except as may be provided hereinafter. When removed before becoming empty such cylinder or container shall be weighed by the seller to determine the quantity of liquefied petroleum gas remaining in such cylinder or container and a written receipt issued to the purchaser or consumer stating such quantity and the amount of the credit due. When weighed on the customer's premises, weight shall be subject to verification by the seller at the dealer distribution point or the filling plant to determine whether credit is due the customer. A cylinder or container shall be considered empty when the gross weight of the cylinder or container does not exceed the tare weight as marked within the tolerance allowed.

6. Each delivery of liquefied petroleum gas sold on a package basis in cylinders or containers to consumers and each delivery of such gas from a vehicle tank or other vessel into tanks, cylinders or containers connected to consumer apparatus when sale is based on a quantity so delivered, shall be accompanied by a delivery ticket and duplicate thereof. On such ticket and duplicate thereof shall be distinctly expressed in ink or other indelible substance the date of delivery, the net weight or volume of such liquefied petroleum gas delivered, the price per unit of metric or customary measure, the total price, the name and address of the seller and the name and address of the purchaser of such liquefied petroleum gas; provided, however, that such delivery ticket need not set forth the total price if within five days after delivery the seller provides the buyer with a written statement setting forth all the foregoing information including the total price. Delivery tickets shall be serially numbered or the serial number of the cylinder or container shall be legibly marked on such delivery ticket. One of such tickets shall be delivered to the person receiving the liquefied petroleum gas, and the other ticket shall be retained by the seller of the liquefied petroleum gas for a period of one year and shall be subject to inspection by any weights and measures official within this time.

7. The use of artificial heat for the purpose of expanding liquefied petroleum gas before or during the process of delivery, when the basis of settlement for such sale or delivery is liquid volume, is prohibited.
8.
  - a. New meters for measuring liquefied petroleum gas sold in the vapor state shall be sealed by the manufacturer thereof as hereinafter provided or by a weights and measures official. The commissioner may prescribe by regulation the specifications and tolerances governing the testing and sealing of such meters and the method of determining the quantity of liquefied petroleum gas, and may authorize any manufacturer or distributor of liquefied petroleum gas to seal used meters upon written agreement to conform to said regulations. The commissioner may revoke for cause the authority so given by him to any manufacturer or distributor of liquefied petroleum gas.
  - b. Meters equipped with automatic temperature compensation shall be sealed and may be used to compute all retail and wholesale transactions.
9. The provisions of this article shall not apply to interstate tank car and transport truck deliveries to bulk storage, nor to public utility systems using pipes or other fixtures in the public highways or streets for the transmission of liquefied petroleum gas and operating under the jurisdiction of the public service commission of this state, nor to any public service company whose operations are subject to the jurisdiction of the said public service commission.

#### **Section 192-f. Bulk sales or transportation; coal and coke**

1. This section shall apply to the bulk sale or transportation of coal, coke, feed for domestic animals, fertilizer, lime and household goods, and any other commodity or article sold or transported by weight as the commissioner may prescribe in regulations. Bulk sale means the sale of any unpackaged commodity when the weight thereof forms a basis for the amount of the sale. Bulk transportation means the transportation of any article when the weight thereof forms a basis for the amount charged by the transporter. This section shall not apply to the sale or transportation of entire rail carload or shipload lots. The commissioner may by regulation exempt from this section bulk sales or transportation in small lots, defined by quantity, selling price or any other appropriate standard prescribed by the commissioner.
2. Coal and coke sold in bulk sale shall be sold by weight.
3. The seller or transporter of any commodity or article covered by this section shall provide the buyer or person for whom transportation is made, at the time of delivery, with a weight ticket issued by a licensed weighmaster. Such weight ticket shall bear the name and address of the seller in the case of a sale and of the transporter in the case of transportation, the date when weighed, and the full signature and license number of the weighmaster. The ticket shall also bear the gross weight of the loaded vehicle, the tare weight of the empty vehicle and the net weight of the commodity or article delivered. If the weight of the product is determined prior to or in the process of loading, the ticket shall bear the net weight of the product and need not bear the gross and tare weights.
4. The operator of any vehicle employed in the delivery of a commodity or article covered by this section shall have in his possession the weight ticket required herein. Any weights and measures official who finds such commodity or article ready for or in process of delivery by vehicle may direct the seller, transporter or vehicle operator to convey the vehicle to an available stationary scale suitable for weighing the loaded vehicle. Such official shall thereupon determine the gross weight of the vehicle and commodity or article and shall direct the seller, transporter or vehicle operator to return to such scale immediately after delivery of the commodity or article, and upon such return such official shall determine the tare weight of the vehicle without load. No seller, transporter or vehicle operator shall fail to take the vehicle, upon the direction of such official, to the scale as aforesaid or refuse to permit the vehicle to be weighed as provided in this section.

#### **Section 192-g. Methyl tertiary butyl ether; prohibited. \* (Effective January 1, 2004)**

1. For the purposes of this section, "gasoline" shall mean any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.
2. No person shall import into, or sell, dispense or offer for sale any gasoline which contains methyl tertiary butyl ether.

3. Any person who violates the provisions of this section shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars.

### **Section 192-h. Alternate generated power source at retail gasoline outlets.**

1. Definitions. When used in this section:

(a) "Alternate generated power source" means electric generating equipment that is of a capacity that is capable of providing adequate electricity to operate all dispensers, dispensing equipment, life safety systems and payment-acceptance equipment located at a retail outlet and which can operate independent of the local electric utility distribution system and provide electricity during a general power outage or declared energy or fuel supply emergency to operate the systems named herein.

(b) "Chain of retail outlets" means a network of subsidiaries or affiliates, under direct or indirect common control, that operate ten or more retail outlets located in a single downstate region; provided, however that this term does not include any franchisor of the brand of motor fuel being sold at such outlet, except if such franchisor owns such outlet.

(c) "Controlled access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

(d) "Diesel motor fuel" means any fuel sold in this state and for use in diesel engines which is commercially known or offered for sale as diesel motor fuel.

(e) "Dispenser" means a device located at a retail outlet that is used to pump motor fuel from an above-ground or underground storage tank into a motor vehicle.

(f) "Downstate region" means each of the following regions of the state:

(i) Long Island region: Includes Nassau and Suffolk counties.

(ii) Lower Mid-Hudson region: Includes Rockland and Westchester counties.

(iii) New York city region: Includes Bronx, Kings, New York, Queens and Richmond counties.

(g) "Evacuation route" means those roads designated by each county that are to be used by motorists in case of a hurricane or other natural disaster.

(h) "Franchisor" means a person or company that grants a franchise to a franchisee.

(i) "Gasoline" means any fuel sold in this state for use in internal combustion engines which is commercially known or offered for sale as gasoline, whether or not blended with ethanol or other chemicals.

(j) "Motor fuel" means any petroleum product, including any gasoline or diesel motor fuel, which is used for the propulsion of motor vehicles.

(k) "Retailer" means any person who owns, operates, or controls a retail outlet that is subject to the requirements of subdivision two of this section.

(l) "Retail outlet" means a facility, including all land, improvements and associated structures and equipment, that dispenses motor fuel for sale to the general public.

2. Prewiring and transfer switch. (a) Retail outlets in the downstate region shall be prewired with an appropriate transfer switch for using an alternate generated power source at such retail outlets as follows:

(i) each retail outlet in operation on the effective date of this section that is located within one-half mile by road measurement from an exit road on a controlled access highway or from an evacuation route shall be prewired by no later than April first, two thousand fourteen;

(ii) each retail outlet beginning operation after the effective date of this section and before April first, two thousand fourteen that is located within one-half mile by road measurement from an exit road on a controlled access highway or from an evacuation route shall be prewired by no later than April first, two thousand fifteen;

(iii) each retail outlet that is located within one-half mile by road measurement from an evacuation route that is designated as such after the effective date of this section or within one-half mile by road measurement from an exit road that is established after the effective date of this section shall be prewired within one year of such designation or establishment provided that funding is available at such time for the program established under subdivision twenty of section eighteen hundred fifty-four of the public authorities law; and

(iv) thirty percent of all retail outlets that are part of a chain of retail outlets, exclusive of those included in subparagraphs (i), (ii) and (iii) of this paragraph, shall be prewired by no later than August first, two thousand fifteen, provided, however, in the case of an existing retail outlet that becomes part of a chain of retail outlets after the effective date of this section and that has been designated by the chain as an outlet comprising such thirty percent, by no later than August first, two thousand fifteen or one year after becoming part of such chain, whichever is later, and provided further, in the case of a retail outlet that is part of a chain of retail outlets, is part of such thirty percent and is subject to paragraph (b) of this subdivision as required in paragraph (b) of this subdivision.

(b) Each retail outlet for which a building permit is issued on or after April first, two thousand fourteen for new construction or for substantial demolition and reconstruction, shall be prewired with an appropriate transfer switch for using an alternate generated power source.

(c) Such transfer switch and all associated electrical wiring shall be installed, operated, and maintained in compliance with all applicable provisions of the New York state uniform fire prevention and building code or any applicable local building code or standard. Installation of appropriate wiring and transfer switches shall be performed by a licensed electrical contractor.

(d) Each retailer shall keep on file at the retail outlet a written statement in a form approved by the department and containing an attestation by a licensed electrician that the wiring and transfer switch were installed in accordance with the manufacturer's specifications. In addition, each such retailer shall maintain the wiring and transfer switch in accordance with the manufacturer's specifications.

(e) Each retail outlet in operation on the effective date of this section that sold less than seventy-five thousand gallons of motor fuel per month on average for the period they were in operation during the twelve months prior to the effective date shall be exempt from the requirements of this subdivision.

3. Emergency deployment. In the event that a declaration of an energy or fuel supply emergency issued by the governor, the county executive of a county in the downstate region or the mayor of a city with a population in excess of one million inhabitants is in effect, a retailer of a retail outlet within any such county or city for which such declaration was issued shall deploy and install an alternate generated power source as follows:

(a) For a retail outlet subject to the requirements of: (i) subparagraphs (i), (ii) or (iii) of paragraph (a) of subdivision two of this section or (ii) paragraph (b) of subdivision two of this section that is located in the downstate region and that is located within one-half mile by road measurement from an exit road on a controlled access highway or from an evacuation route, within twenty-four hours of such declaration, if such outlet is without power at the time of such declaration. Provided, however, if any such outlet loses power following such declaration and while the declaration is still in effect, then the alternate generated power source shall be deployed and installed within twenty-four hours of such loss of power.

(b) For a retail outlet prewired pursuant to the requirements of subparagraph (iv) of paragraph (a) of subdivision two of this section, within forty-eight hours of such declaration, if such outlet is without power at the time of such declaration. Provided, however, if any such outlet loses power following such declaration and while the declaration is still in effect, then the alternate generated power source shall be deployed and installed within forty-eight hours of the loss of power.

3-a. Declaration of energy or fuel supply emergency. Upon issuance of a declaration of an energy or fuel supply emergency pursuant to this subdivision, a county executive of a county in the downstate region or mayor of a city with a population in excess of one million inhabitants who declared such emergency shall promptly notify the president of the New York state energy research and development authority, the commissioner of homeland security and emergency services, and impacted residents using such means as are practicable and efficient.

4. Plan for alternate generated power source. Each retailer subject to subdivision three of this section shall by the date of the installation of the prewiring and transfer switch required under subdivision two of this section have in place at each applicable retail outlet documentation in a form approved by the department demonstrating a plan to deploy and install an alternate generated power source located at such retail outlet as required under subdivision three of this section. Such plan shall take one of the following forms:

(a) a receipt or other documentation showing ownership of such power source;

(b) for a retailer subject to paragraph (a) of subdivision three of this section, documentation attesting to participation in the program established under subdivision twenty-one of section eighteen hundred fifty-four of the public authorities law; or

(c) a contract with a supplier of such power source providing for deployment and installation of such power source in compliance with the requirements of this section, or other documentation demonstrating the retailer's ability to comply with the requirements of this section, which may include the generator deployment and installation plan of a chain of retail outlets.

5. Inspection; recordkeeping; reporting. The commissioner or the commissioner's designee shall be authorized to enter during regular business hours upon a retail outlet subject to the requirements of subdivision two of this section for the purpose of determining compliance with the provisions of this section and any rules or regulations promulgated hereunder. All documents required pursuant to subdivisions two and four of this section shall be maintained at the applicable retail outlet and made available to the commissioner or the commissioner's designee upon request. In addition, each retailer of a retail outlet, except for retail outlets granted exemptions under paragraph (e) of subdivision two of this section, shall provide to the department by April first, two thousand fourteen and every two years thereafter written documentation in a form approved by the department certifying that such retail outlet is in compliance with the requirements of this section, and any other requirement specified by any rules or regulations promulgated hereunder; provided, however, that, for each retail outlet that is part of a chain of retail outlets or to which subparagraph (ii) or (iii) of paragraph (a) or paragraph (b) of subdivision two applies, such written documentation shall be provided to the department within ten days after the date of installation of the prewiring and transfer switch required to be installed under subdivision two of this section and every two years thereafter.

6. Rules and regulations; notification of applicability. The commissioner shall have the authority, with the assistance of the commissioner of transportation, the commissioner of homeland security and emergency services, the president of the New York state energy research and development authority, the secretary of state and the chair of the public service commission, to promulgate such rules and regulations as the commissioner shall deem necessary to effectuate the purposes of this section. The commissioner shall by June first, two thousand thirteen: (a) notify by first class mail all existing retail outlets that appear to meet the criteria specified in subdivision two of this section of the requirements of this section and include with such notification any other information deemed necessary by the commissioner, including information regarding applicability criteria, compliance measures and potential grant assistance; (b) provide a list of all such retail outlets to the governor, the temporary president of the senate and the speaker of the assembly; and (c) post such list on the department's website. If approval of federal mitigation funds or other approved resources for the program established under subdivision twenty of section eighteen hundred fifty-four of the public authorities law occurs after June first, two thousand thirteen, the commissioner shall provide additional notification of such approval within thirty days. Any retailer of a retail outlet specified on such list shall be subject to the requirements of this section unless he or she provides written documentation to the department by August first, two thousand thirteen proving that such outlet does not qualify, or is eligible for an exemption pursuant to paragraph (e) of subdivision two of this section. The commissioner shall update such list every five years thereafter and notify all new retail outlets that become subject to the requirements of this section; provided, however, that compliance with the requirements of this section is not conditioned on such notification.

7. Violations and penalties. Any retailer who violates any provision of this section, or any rule or regulation promulgated hereunder, shall be liable to the people of the state for a civil penalty of up to one thousand five hundred dollars per day for every such violation, to be assessed by the commissioner, after a hearing or opportunity to be heard upon due notice and with the right to representation by counsel. In determining the amount of civil penalty, the commissioner shall take into consideration mitigating factors, such as the availability of gasoline at the retail outlet, provided that the retailer did not refuse such delivery, and the extent to which the retailer's action or inaction contributed to the violation. Such penalty may be recovered in an action brought by the attorney general at the request and in the name of the commissioner in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general. Additionally, after such hearing and a finding that such retailer has violated the provisions of this section, or of any rule or regulation promulgated thereunder, the commissioner may issue and cause to be served upon such person an order enjoining such person from violating such provisions and taking all necessary actions for such person to come into compliance with such provisions. Any such order of the commissioner may be enforced in an action brought by the attorney general at the request and in the name of the commissioner in any court of competent jurisdiction.

Notwithstanding the foregoing, such retailer shall not be in violation of subdivision three of this section if he or she is unable to deploy, install or operate an alternate generated power source because of uncontrollable circumstances, including but not limited to, restrictions imposed by public safety officers to address an emergency situation or that such retail station is made unsafe or unable to operate due to acts of God, fires, floods, explosions or the safety of personnel needed to operate such retail outlet. Additionally, such retailer shall not be in violation of subdivision three of this section if he or she is a participant in the program established under subdivision twenty-one of section eighteen hundred fifty-four of the public authorities law and a generator is not provided to the retailer due to the prioritization allowed under such subdivision or through no fault of the retailer.

8. This section shall not be construed to require any retailer to maintain set business hours in the event of an energy or fuel supply emergency.

9. The provisions of this section shall supersede all local laws or ordinances in the downstate region relating to the installation and deployment of an alternate generated power source or any related electrical or other equipment at any retail outlet.

10. The requirements of this section shall be contingent on the approval of federal mitigation funds or other approved resources for the program established under subdivision twenty of section eighteen hundred fifty-four of the public authorities law. In the event such approval does not occur as of June first, two thousand thirteen, all deadlines with a date of April first, two thousand fourteen shall be delayed by the amount of time such approval is delayed past June first, two thousand thirteen.

### **Section 193. Fair packaging and labeling of containers**

When commodities are sold, or offered or exposed for sale in containers, the net quantity of the contents shall be plainly and conspicuously marked, branded or otherwise indicated, on a label or tag attached thereto, in terms of weight, measure, numerical count or other unit as may be prescribed by the commissioner.

### **Section 194. False labels**

1. No individual, partnership, corporation, association or firm shall put upon any commodity sold, offered or exposed for sale or upon any container, package, ticket or label used in relation to such commodity, or with which such an article is intended to be sold, any false description or false indication of or respecting the number, quantity, weight or measure of such commodity or any part thereof; or sell or offer or expose for sale any commodity which is falsely described or indicated in any of the manners or in any of the particulars as specified in this article or rules and regulations promulgated hereunder. The term "container" shall include any carton, box, crate, barrel, hamper, keg, drum, jar, jug, crock, bottle, bag, basket, pail, can, wrapper, parcel or package.

2. Any individual, partnership, corporation, association or firm violating this section with intent to defraud shall be guilty of a misdemeanor.

3. Any individual, partnership, corporation, association or firm violating this section without intent to defraud shall be subject to the civil penalties as provided in sections thirty-nine and forty of this chapter.

## **Section 195. Licensing of weighmasters; duties**

1. No person shall act as a weighmaster, issue or sign any weight tickets, or carry out any functions of a weighmaster unless licensed pursuant to this section.
2. Upon application, a weighmaster's license may be issued by the commissioner to an employee of a person, firm, partnership or corporation whose business requires, by contract or otherwise, that materials or commodities manufactured, produced, distributed, sold or handled by such person, firm, partnership or corporation be weighed by a licensed weighmaster; or such license may be issued to an individual engaged in the weighing of materials or commodities. The applicant shall furnish satisfactory evidence of good character and of ability to weigh accurately and to make correct weight tickets. He shall also furnish evidence that he owns, leases, or has access to a stationary scale within the state suitable for weighing the materials or commodities to be weighed by him or that he is regularly employed by a person, firm, partnership or corporation who owns, leases or has access to such a scale which has been tested and sealed by the weights and measures official charged with such duty. The applicant shall pay a fee of fifteen dollars. A license shall be for a period not exceeding three years and may be renewed in the discretion of the commissioner upon payment of the fee aforesaid. Such license shall be kept at the place where the weighmaster is engaged in weighing and shall be open to inspection. An application may be denied or a license may be revoked by the commissioner, after a hearing upon due notice to the applicant or licensee, for dishonesty, incompetency, inaccuracy or a violation of the provisions of this article or the rules and regulations adopted pursuant thereto.
3. Each weight ticket issued by a weighmaster shall contain the date, full signature and license number of the weighmaster.
4. Each weighmaster shall retain for a period of one year a copy of every weight ticket he has issued.
5. No weighmaster shall make or issue a false or incorrect weight ticket, nor shall any person solicit him to do so. No person shall knowingly use a false or incorrect weight ticket. No weighmaster shall permit any weight ticket to be issued or used which purports to bear his signature and was not in fact signed by him, or which expresses a weight not ascertained by him.

### **Section 195-a. Weight tickets issued in other states**

Whenever in any state requiring weighing licenses or weight tickets, the administrative officer in charge thereof is authorized by statute to recognize and accept weighing licenses and weight tickets of this state, the commissioner in his discretion is authorized to recognize and accept such licenses and tickets provided such tickets have been issued by a licensed weighmaster.

## **Section 196. Statewide uniformity**

1. Notwithstanding the provisions for any other general, special or local law, the commissioner may, in order to secure uniform regulation of weights and measures throughout the state, reverse, modify or annul in whole or in part any rule, regulation, direction, order, ordinance, local law or other provision adopted by any municipality which contravenes or is inconsistent with the provisions of this article or any rules and regulations promulgated by the commissioner.
2. The order of the commissioner affecting any such municipal provision shall state the date on which it takes effect and a copy thereof, duly signed by the commissioner, shall be filed as a public record in the state department of agriculture and markets.

## **Section 197. Construction of contracts**

All contracts made within the state for work to be done, or for the sale and delivery of personal property by weight or measure shall be construed according to the standards of weights and measures adopted in this article and rules and regulations promulgated pursuant thereto.

### **Section 197-a. Weights and Measures Fees.**

Notwithstanding any other provision of law to the contrary, the commissioner is hereby authorized and directed to deposit all money received in payment of fees under this article in an account within the miscellaneous special revenue fund.

## **Section 197-b. Retail Pricing Accuracy.**

### 1. Definitions.

- a. "Retail store" shall mean a store that sells stock-keeping units directly to consumers and charges or is liable for the collection of sales tax. For the purposes of this section the term "retail store" shall include those stores that use universal product code (UPC) scanners or price-look-up (PLU) codes in checkout systems or use manual pricing of items.
- b. "Pricing accuracy inspection" shall mean an inspection of a retail store for the purpose of ensuring that customers are charged the correct price for the items they purchase.
- c. "Price charged" means the price a customer is charged for an item. For prices determined by an automated checkout device, the price charged means the price on the receipt issued to the consumer after the final total has been determined, whether the item is scanned or actually purchased, the device is computing or recording while in training mode, or by using a hand-held device connected to a store's database.
- d. "Stock-keeping unit" means each group of items offered for sale of the same brand, quantity of contents, retail price, and having different colors, flavors, or varieties.
- e. "Retail price" means the lowest advertised, written, posted, or marked price of a stock-keeping unit.
- f. "Overcharge" means a price charged that is higher than the retail price.
- g. "Undercharge" means a price charged that is lower than the retail price.
- h. "Large overcharge" means an error of twenty-five cents on any individual item up to two dollars and fifty cents and ten percent thereafter.

### 2. Pricing requirements. A retail store shall:

- a. Display the retail price of each stock-keeping unit offered for sale, either on each unit or on easy to read shelf tags, or signs, located directly above or below or immediately adjacent to every stock-keeping unit or group of stock-keeping units of the same brand, size and price.
- b. Assure that the price charged after the final total has been determined is equivalent to the retail price.
- c. If a UPC scanner system is used to determine the price charged, provide the appropriate inspection official access to the checkout system in use at such retail store to verify the price charged for items included in a pricing accuracy inspection. Access shall be provided to the system either in normal operating mode, in training mode, or through a hand-held or other device tied to the store's database.
- d. Post, in a conspicuous place, the refund policy of such retail store in the event of an overcharge.

### 3. Test procedures and accuracy requirements.

- a. The commissioner shall, by regulation, adopt test procedures utilizing randomized sampling techniques. Such procedures shall be consistent with the examination procedure for price verification developed by the national conference on weights and measures and published in the national institute of standards and technology handbook one hundred thirty. For purposes of this section, pricing accuracy inspections shall, to the extent possible, be conducted at a time and in a manner that does not interrupt the normal flow of retail business at the retail store.

- b. A retail store at least three hundred square feet in size shall be deemed in compliance if ninety-eight percent of the items in the sample selected are accurately priced. For purposes of this section retail stores that are less than three thousand square feet and employ a manual pricing system shall be deemed in compliance if, effective June first, two thousand seven through May thirty-first, two thousand eight, at least ninety-six percent of the items in the sample selected are accurately priced and beginning on June first, two thousand eight at least ninety-eight percent of the items in the sample selected are accurately priced.
- c. In addition to establishing a standard frequency of inspection consistent with the provisions of paragraph a of this subdivision, the commissioner or a weights and measures official may conduct inspections of individual items in response to consumer complaints or as a follow-up on items ordered to be corrected in a previous inspection.

4. Enforcement procedures.

- a. The commissioner or a weights and measures official shall advise the operator of the retail store of any pricing error encountered in an inspection. If the correction cannot be made immediately, then, the commissioner or a weights and measures official shall issue a stop removal order for items subject to overcharges and such stock-keeping units shall be removed from sale until correction is made.
- b. Upon finding a violation of this section, the commissioner or the municipal director of weights and measures may impose civil penalties as prescribed in section thirty-nine of this chapter. Such penalty shall not exceed ~~three hundred dollars per violation~~ (the amounts in section thirty-nine) for violations assessed during an initial inspection in a calendar year and shall not exceed ~~six hundred dollars per violation~~ (the amounts in section thirty-nine) for violations assessed in a second or subsequent inspection during a calendar year. In determining the amount of any civil penalty imposed, the magnitude of the errors, corrective action taken by the retail store, history of such prior conduct, or other relevant information shall be considered. Penalties may only be imposed for:
  - (1) Overcharges found in a sample selected using the procedures adopted pursuant to subdivision three of this section, when overcharges number more than two percent of the sample. Each such overcharge may be considered a separate violation provided, however, that any overcharge for a single stock-keeping unit that includes more than one item in such unit shall count as a single violation and not as separate violations for each item in the stock-keeping unit.
  - (2) A large overcharge found on an individual item.
  - (3) An overcharge verified in response to a consumer complaint.
  - (4) Overcharges found on follow-up inspections of items ordered corrected.
  - (5) Failure to disclose the retail price of a stock-keeping unit pursuant to paragraph a of subdivision two of this section.
  - (6) Failure to conspicuously post a refund policy pursuant to paragraph d of subdivision two of this section.

5. Local pricing laws. Nothing in this section shall be construed to prohibit a political subdivision of the state from continuing to implement and enforce any local pricing law or regulation in effect prior to the effective date of this section. Where a political subdivision has a local pricing law in effect prior to the effective date of this section, the provisions of this section shall have no force and effect until such time as the political subdivision repeals its local pricing law. Any political subdivision of the state not having any local pricing law or regulation in effect prior to the effective date of this section shall adopt and implement the pricing accuracy provisions set forth in this section or by regulations adopted pursuant to this section.

## **RELATED LAWS**

### **From Agriculture and Markets Law Article 3**

#### **Section 39. Penalties for violation of chapter or other laws.**

Every person violating any of the provisions of this chapter, or of any other law the enforcement of which is within the jurisdiction of the department shall, except where other penalties are hereinafter prescribed, be subject to a penalty in the sum of not more than six hundred dollars for the first violation, nor more than one thousand two hundred dollars for the second and each subsequent violation and provided further, however, that for a violation of subdivision thirteen of section two hundred of this chapter, the minimum penalty shall be five hundred dollars and the maximum penalty shall be one thousand dollars and that for the second and subsequent offenses such person may also be subject to an administrative order suspending the manufacture and/or sale of such confectionery for a period of time up to three months for each such violation. When such violation consists of the manufacture or production of any prohibited article, each day during which or any part of which such manufacture or production is carried on or continued, shall be deemed a separate violation. When the violation consists of the sale, or the offering or exposing for sale or exchange of any prohibited article or substance, the sale of each one of several packages shall constitute a separate violation, and each day on which any such article or substance is offered or exposed for sale or exchange shall constitute a separate violation. If the sale be of milk and it be in cans, bottles or containers of any kind and if the milk in any one of such containers be adulterated, it shall be deemed a violation whether such vendor be selling all the milk in all of his containers to one person or not. When the use of any such article or substance is prohibited, each day during which or any part of which such article or substance is so used or furnished for use, shall constitute a separate violation, and the furnishing of the same for use to each person to whom the same may be furnished shall constitute a separate violation. When the storage of any article is prohibited beyond a certain period, each day during which or any part of which any article is so stored beyond the period provided for by this chapter, shall constitute a separate violation. A right of action for the recovery of, or a liability for, penalties incurred as provided in this chapter, or in any other law the enforcement of which is within the jurisdiction of the department, may be released, settled or compromised before the matter is referred to the attorney-general as provided in section forty-four of this chapter, and thereafter may be released, settled or compromised by the attorney-general, either before or after an action is brought to recover such penalties.

#### **Section 40. Penalty for violation of rule or order**

1. Every person, association or corporation and all agents, officers and employees thereof, shall obey every order made as provided in this chapter, so long as such order shall be in force. A person, association or corporation who shall fail by himself, itself or through his or its agents, officers and employees, to obey any order of the commissioner, or who shall violate any rule of the department shall be subject to a penalty not exceeding the sum of four hundred dollars for each and every first offense, and a penalty not exceeding the sum of eight hundred dollars for a second and each subsequent offense. Every violation of such order, or of the rules of the department shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance thereof shall be a separate and distinct offense.

#### **Section 41. Violation of chapter a misdemeanor**

Except as otherwise provided by the penal law, a person who by himself or another violates any of the provisions of this chapter or of any other law the enforcement of which is within the jurisdiction of the department, is guilty of a misdemeanor, and upon conviction shall, except as otherwise provided in this chapter, be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment for not less than one month, nor more than six months, or by both such fine and imprisonment, for the first offense; and by not more than one year's imprisonment for the second offense.

## RELATED LAWS

### From Agriculture and Markets Law Article 17

#### Section 214-h. Unit pricing

1. Consumer information required. Each person who sells, offers or exposes for sale at retail in a food store a consumer commodity shall disclose to the consumer the unit price and the total price of the commodity as provided in this section.

2. Definitions. a. "Consumer commodities" shall mean the following, however packaged or contained:

(1) food, including all material, solid, liquid or mixed, whether simple or compound, used or intended for consumption by human beings or domestic animals normally kept as household pets and all substances or ingredients to be added thereto for any purpose; and

(2) napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, disposable plates; and

(3) detergents, soaps and other cleansing agents; and

(4) non-prescription drugs, female hygiene products and toiletries.

b. "Retail store" shall mean a store which sells consumer commodities at retail, such store is not primarily engaged in the sale of food for consumption on the premises, or which is not primarily engaged in a specialty trade which the commissioner determines, by regulation, would be inappropriate for unit pricing. An establishment which sells consumer commodities only to its members shall be deemed to be included within this definition unless the members must pay a direct fee to qualify for membership and the establishment is not required to collect sales tax on transactions with its members, pursuant to article twenty-eight of the tax law.

c. "Unit price" of a consumer commodity shall mean the price per measure.

d. "Price per measure" shall mean:

(1) price per pound for commodities whose net quantity is expressed in units of weight, except for such commodities whose net weight is less than one ounce which shall be expressed as price per ounce and commodities in powdered form which purport to be or are represented for special dietary use solely as a complete or partial substitute for human milk which shall be expressed as price per reconstituted fluid ounce; provided that the same unit of measure is used for the same commodity in all sizes;

(2) price per pint or quart for commodities whose net quantity is stated in fluid ounces, pints, quarts or gallons or a combination thereof, except for such commodities in concentrated liquid or ready to feed form which purport to be or are represented for special dietary use solely as a complete or partial substitute for human milk which shall be expressed as price per reconstituted fluid ounce for commodities in concentrated liquid form and price per fluid ounce for commodities in ready to feed form; provided that the same unit of measure is used for the same commodity in all sizes sold in the retail establishment;

(3) price per one hundred for commodities whose net quantity is expressed by count, except as otherwise provided by regulation;

(4) price per foot for commodities whose net quantity is stated in units of length, except for such commodities whose net quantity exceeds one hundred feet, which shall be expressed as price per one hundred feet, and the "ply" count, if any, provided that the same unit of measure is used for the same commodity in all sizes;

(5) price per square foot or square yard, as appropriate, for commodities whose net quantity is expressed in units of area and the "ply" count, if any, provided that the same unit of measure is used for the same commodity in all sizes; or

(6) such other price per measure, including metric equivalents of the customary measures, as the commissioner shall by regulation permit. The commissioner shall establish such metric equivalents whenever he determines that any commodity subject to the provisions of this section is being sold, offered or exposed for sale by metric measure.

3. Exemptions. a. The provisions of this section shall not apply to the following consumer commodities:

(1) food sold for consumption on the premises;

(2) prepackaged food containing separate and identifiable kinds of food segregated by physical division within the package; and any other foods for which the commissioner determines, by rules and regulation, that unit pricing would not be meaningful;

(3) any food which is primarily or exclusively a gourmet or specialty food, provided that the commissioner determines by regulation that unit pricing would be impractical for such food, and provided further that such food is segregated and displayed as a gourmet or specialty food;

(4) any commodity whose net quantity as offered for sale is one pound, one ounce, one pint or quart, one hundred count, one foot, one hundred feet, one square foot, one square yard or equivalent metric units established by the commissioner, provided that it has the retail price marked plainly thereon;

(5) milk, and other similar low fat products such as two percent milk, one percent milk and skim milk, cream, melloream and vegetable oil blend whose net quantity as offered for sale is one half pint, one pint, one quart, one half gallon, one gallon, one half liter, one liter; frozen desserts such as ice cream, light ice cream, low-fat ice cream, fat-free ice cream, sherbet, sorbet, frozen yogurt, and any other product similar in appearance, odor and taste to such products whose net quantity as offered for sale is one half pint, one pint, one quart, one half gallon, one gallon, and multiples of quarts and gallons; and butter vegetable spread, oleo margarine and margarine whose net quantity is one fourth pound, one half pound, one pound, or multiples of one pound, one hundred twenty-five grams, two hundred fifty grams, five hundred grams, or multiples of five hundred grams; flour whose net quantity as offered for sale is in five or ten pound bags;

(6) fresh food produce.

b. The provisions of this section shall not apply to any retail store having had annual gross sales of consumer commodities in the previous calendar year of less than two and one-half million dollars.

4. Means of disclosure. A consumer commodity sold, or offered for sale or exposed for sale, subject to this section, shall have the unit price and total price disclosed to the consumer in one of the following ways:

a. if the item is conspicuously visible to the consumer, by the attachment of a stamp, tag or label directly under the item on the shelf on which the item is displayed, or, in the case of refrigerated items not displayed on shelves, in a manner to be prescribed by regulation; or

b. if the item is not conspicuously visible to the consumer, by a sign or list conspicuously placed near the point of procurement, or by affixing the unit price and total price on the commodity itself.

5. The commissioner may promulgate regulations to effectuate this section.

6. Nothing in this section shall be construed to conflict with or limit section one hundred ninety of this chapter.

7. Violations and penalties. a. A violation of this section shall be subject to the applicable penalties of this chapter except for the penalties specified in section forty-one thereof.

For purposes of this section, each group of identical consumer commodities for which on any single day the total selling price or price per measure is not displayed in accordance with this section or the regulations promulgated thereunder shall be considered a violation of this section. Improper unit pricing caused by nonintentional technical errors, however, shall not constitute a violation.

b. Each group of units not unit priced or improperly unit priced shall constitute a violation. Each individual unit, however, not unit priced or improperly unit priced shall not constitute a violation unless displayed alone.

c. Each day a violation is continued shall constitute a separate violation.

d. The provisions of this section and the regulations promulgated hereunder may be enforced concurrently by the director of a municipal consumer affairs office or a municipal director of weights and measures.

8. Preemption. Except as provided in paragraph b of subdivision three of this section, any local law, ordinance, rule or regulation relating to labeling, displaying or other disclosure of the price per measure of any commodity must be consistent with the provisions of this section and the rules and regulations adopted hereunder.

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