

# Enforcement Action for Marked and Unmarked Scales

Last Revision: January 18, 2017

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## Background

Under Wis. Stats. § 98.05(2), Wis. Stats., sealers and inspectors:

*"shall inspect and test any weights and measures or commodities which are sold or used commercially as often as necessary to secure compliance with this chapter, and may seize as evidence, or reject and mark or tag as "rejected" those which are incorrect."*

Possessing this authority, inspectors are authorized to reject scales found to be incorrect. Depending on the type of violation and the circumstances surrounding it, weights and measures staff also have a variety of other enforcement tools available to insure compliance.

The National Conference on Weights and Measures adopted a class system for scales manufactured after January 1, 1986. This designates Class I/II/III/IIIL/IV scales to represent all commercial weighing devices. Scales manufactured before that date are unmarked.

## Policy

Violations of the Scales Code (CH 98, ATCP 92, and Handbook 44) should be handled as follows:

Rejected 30 days – A scale that is not correct due to deficiencies that are not related to the accuracy of the device. For example: missing markings, level condition, loose coping.

Rejected 7 days – A scale that is out of tolerance in favor of the business.

Rejected 1 day – If red tagging a scale would force a business to cease operations.

Red Tag – Should be considered when one or more of the following conditions exist:

- (1) The error of over or under registration is twice the applicable tolerance.
- (2) Zero cannot be repeated within two scale divisions on automatic indicating scales.
- (3) Upon re-inspection and past the stated deadline date, a scale previously documented as “Rejected X Days” is still incorrect and in commercial use.
- (4) A scale is found to have deficiencies or irregular performance as to affect the accuracy of the device and, in the judgement of the inspector, rejection is necessary to prohibit economic loss.
- (5) A device that is required to be licensed is found to be operating without a license (see “license Surcharge Fees”)

 [NIST Handbook 44](#)  
[Sec. 2.20 Scales](#)  
 [Wis. Stat. 98.05\(2\)](#)  
 [Wis. Stat. 98.26](#)

## **Enforcement**

**Information and Education** - This option may be considered when the violation(s) are negligible or are due to inadvertent errors or unusual circumstances and, in the judgement of the inspector, exercising this option will have sufficient affect in achieving compliance.

**Warning Letter** - A warning letter should be considered when any of the following exists:

- (1) The information and education option has been previously exercised for the same violation(s) and the action has failed to achieve compliance.
- (2) Whenever a series of violations or a major violation occurs which indicates the owner or operator does not have proper testing and maintenance procedures to insure the scale's accuracy and correctness according to Handbook 44.
- (3) A re-inspection of rejected scale(s) shows the problem still exists and the owner/operator has control over the deficiency.

**Higher Enforcement Action** - One should consult with his/her supervisor to consider formal legal action whenever one of the following conditions exists:

- (1) A re-inspection after a warning letter indicates the same problem(s) exist.
- (2) A prior history of violations exist or, as the result of a consumer complaint. An investigation reveals conditions which would warrant rejecting and "Red Tagging" a device.
- (3) Evidence reveals an unwillingness to comply.
- (4) Conditions facilitate fraud.

*Effective Date: August 19, 1997*  
*Revised: January 26, 2012*