

Enforcement Action

Effective Date: August 19, 1997

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Background

It is our responsibility as regulators to protect consumers from financial losses due to incorrect pricing. As we recognize the importance of uniform inspection procedures throughout the country, we also recognize our prime responsibility to protect consumers from financial losses due to incorrect pricing. On May 16, 1996, Wis. Stats. § 98.26(1)(c) was amended prohibiting the following act:

"Represents in any manner a false quantity or price in connection with the purchase or sale, or any advertising thereof, of any commodity, thing or service."

In response to increasing demand for uniform testing procedures in all retail stores, the National Conference on Weights and Measures, in cooperation with industry, developed a standard procedure for price verification, NIST HB 130, and according to the Examination Procedure for Price Verification, Section 1.Scope:

"...Nothing in this procedure should be construed or interpreted to redefine any state or local law, or limit any jurisdiction from enforcing any law, regulation, or procedures that relates to the accuracy of advertisements of retail prices, or any other legal requirements."

Therefore, the following enforcement procedures were adopted to ensure an effective means of enforcing the laws and regulations prohibiting false pricing practices.

Procedure

When assigned, inspectors will be provided with specific testing instructions (Appendix A).

Weights and Measures staff will observe the testing procedure guidelines set forth in NIST HB 130 that do not conflict with applicable state laws. However, in lieu of the NIST HB 130 enforcement guidelines, the following enforcement procedures will be used.

Enforcement

Due to varying factors and the magnitude of the problem, the appropriate level of enforcement action may begin at any stage. To help determine this level, the test results should be compiled into a data chart.

 [Wis. Stats. 98.26\(1\)\(c\)](#)
 [Wis. Stats. 98.08](#)
 [NIST Handbook 130](#)

Information and Education

This option may be exercised on site, by the inspector, after performing a price verification test where errors are found. All pricing errors should be brought to the attention of store officials for immediate corrective action, providing such action will not jeopardize the investigation.

Warning Letter - A Warning Letter should be considered when an individual store, or chain of stores, fail(s) a test and:

- 1) There is prior history of overcharges and
- 2) A Warning Letter should be sufficient to gain compliance.

Examples of situations warranting Warning Letter consideration:

- a. The error rate on overcharges is 2%-5%.
- b. The test failure is due to undercharges.
- c. Incorrect signage as required under ss.98.08(2).

All warning letters should contain a request for a written response from the business as to the corrective steps they have taken to prevent future violations.

If the violating store is part of a chain, any warning letter should be addressed directly to the president of the corporation, and a copy provided to the individual store(s).

Compliance Conference - A Compliance Conference should be considered when an individual store, or chain of stores, fail(s) and:

- 1) There is a history of overcharges, and/or
- 2) Evidence indicates a serious problem exists with maintaining compliance.

Examples of evidence indicating that a serious problem exists:

- a. Error rate on overcharges is over 5%.
- b. Large monetary overcharges on individual items.
- c. Two or more stores of a chain fail due to overcharges.
- d. An unwillingness or inability on the part of the business to comply.

The goals of a Compliance Conference are to obtain a corrective action plan from the business, and to obtain an Assurance of Compliance that includes a Consumer Bonus Program. A civil forfeiture* settlement should be obtained from the business upon determination of any of the following:

- 1) Lower levels of enforcement action have failed to achieve compliance.
- 2) Major problems exist creating harm to consumers.
- 3) Evidence shows an ongoing unwillingness or inability on the part of the business to comply.

* **Civil Forfeiture Settlement.** On any civil forfeiture settlement, overcharges from all tests are cited as violations under Wis. Stats. § 98.26(1)(c), and violations of signage under Wis. Stats. § 98.08 are cited under Wis. Stats § 98.26(1)(f).

Formal Legal Action - Referral for prosecution should be considered when any of the following exists:

- 1) Lower levels of enforcement action have failed to achieve compliance and
- 2) The Department is not left with a more appropriate alternative.
- 3) A referral is deemed warranted upon review of the evidence.
- 4) Intentional acts of fraud are uncovered.

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

Department of Agriculture, Trade and Consumer Protection

TO: State Weights and Measures Inspectors, City Sealers

FROM: Alicia Clark, Regulatory Specialist

DATE: (ENTER DATE HERE)

WHAT: STATEWIDE PRICE VERIFICATION SURVEY OF (ENTER BUSINESS NAME HERE) STORES. Be at the store as soon as they open. The survey is for pricing errors for sale/clearance items. This investigation may result in higher level enforcement action.

WHEN: (ENTER FIRST DAY HERE)
(ENTER FOLLOW-UP DATE HERE)

WHERE: Inspectors will select the stores, no location list is provided. The goal is for every inspector/city sealer to test at least two stores. State inspectors should give priority to stores that have had prior compliance problems. Contact Alicia Clark for any assignment changes.

WHO: All state inspectors and City Sealers. Please call (608 224-4938) or e-mail (Alicia.Clark@wisconsin.gov) by (ENTER DATE HERE) to confirm your participation.

HOW:

1. Test only products that are on sale or clearance. Follow NIST Handbook 130 (section 7.3.2) stratified sample collection procedures for scanner testing.
2. Include items in the stratified collection process that have signs indicating the sale has expired.
3. Follow NIST Handbook 130 (section 7.3) Table 1 procedures for sample size.
4. Conduct a follow-up test on (ENTER DATE HERE) for all stores with overcharge errors on (ENTER DATE HERE). Test all the items that were overcharges the previous day, even if the store passed the first inspection. Note: Results should be recorded in a Day Two inspection and on the Inspector Notes Form/WinWam Notes section. Do not tell the store you will be returning.
5. Count the number of overcharge error products on the store shelf or display area, on the second day of re-inspection. **Always** indicate the number of products on your report in the WINWAM lot size field, or if you don't use WINWAM record the number of products on the shelf on the inspectors note's form.

6. Allow the sales clerk to determine the price using the store's normal operating procedures, including the price reductions not programmed into the point-of-sale system. Don't alert the clerk; just allow them to follow their normal process. For example, if the store has sales items on a clearance rack, and the price will be manually influenced by the checkout clerk, bring the items to the register and let the clerk determine the price of item. Some stores use their own UPC codes rather than the universal codes that can be read by WINWAM. If you use a scanning gun and the UPC code doesn't record correctly, or does not retrieve the pricing information, you will need to bring the item to the sales clerk.
7. Check for overcharge refund signs required by Wis. Stat. §98.08. The signs must be conspicuously posted, which means that consumers at every checkout register can easily read a sign.
 - a. Document on your inspection report and use the language "signage is conspicuously posted and visible at every register" or "signage is not conspicuously posted and visible at every register". Identify, on your inspection report, the registers that did not have signage conspicuously posted and visible. Document noncompliance as violations of Wis. Stat. §98.08. If you have to recheck a store for overcharges, check for signage if signage was not posted on the first day of the survey.
8. Survey records procedures:
 - a. If using a WinWam report send PDF summary and detailed file, city sealers, if WinWam is not available send your scanner price verification report. Include any inspector notes.
 - b. Obtain a cash register receipt.
 - c. Obtain a sales flyer (if available).
9. Ask the store manager (or representative) to sign the test report, and supply a copy of it. Be sure to indicate who signed the report when using WinWam. Always inform the manager that all overcharge errors must be corrected **immediately**. Avoid comments – we need to evaluate all the results before deciding on any enforcement action. **DO NOT** take any formal enforcement action on your own (i.e. No Warning Letters).
10. Send PDF's of WinWam summary and detailed reports, to Alicia.Clark@Wisconsin.gov by (ENTER DATE HERE). Cash register receipts, sales flyer and non-electronic scanner price verification reports should be mailed to: Alicia Clark, Weights and Measures, PO Box 8911, Madison, WI 53708-8911

QUESTIONS? Prior to Survey – Alicia Clark (office 608/224-4938) Day of Survey – Alicia Clark, Shelly Miller (cell phone 608/516-5362) or Steve Peter (cell phone 608/921-0390).