

TITLE 71
WEIGHTS AND MEASURES

CHAPTER 1
DIVISION OF WEIGHTS AND MEASURES

71-108. DEFINITIONS. When used in this act:

(1) The word "person" shall be construed to mean both the plural and singular, as the case demands, and shall include individuals, partnerships, corporations, companies, societies, and associations.

(2) The words "weight(s) and (or) measure(s)" shall be construed to mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices, except that the term shall not be construed to include meters for the measurement of electricity, gas (natural or manufactured), or water when the same are operated in a public utility system. Such electricity, gas, and water meters are hereby specifically excluded from the purview of this act, and none of the provisions of this act shall be construed to apply to such meters or to any appliances or accessories associated therewith.

(3) The word "net" shall be construed to mean clear of, or excluding all tare, wrappers and other material packed with a commodity or in which a commodity is contained.

(4) The word "weight" as used in this act in connection with any commodity shall mean net weight. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed.

(5) The words "sell" and "sale" shall be construed to mean barter and exchange.

(6) The term "director" shall be construed to mean, respectively, (the state) the director of the department of agriculture or his duly authorized employees.

(7) The term "inspector" shall be construed to mean a state inspector of weights and measures.

(8) The term "intrastate commerce" shall be construed to mean any and all commerce or trade within the limits of the state of Idaho, and the phrase "introduced into intrastate commerce" shall be construed to define the time and place at which the first sale and delivery of a commodity is made within the state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(9) The term "commodity in package form" shall be construed to mean commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container inclosing packages that individually conform to the requirements of this act. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be construed to be commodity in package form.

(10) A "consumer package" or "package of consumer commodity" shall be construed to mean a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals for the purpose of personal care or use by indi-

viduals or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(11) A "nonconsumer package" or "package of nonconsumer commodity" shall be construed to mean any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(12) For the purposes of this act, apparatus shall be deemed to be "correct" when it conforms to all applicable requirements promulgated by the national bureau of standards or its successor organization, the national institute of standards and technology, or by regulation passed by the director. Other apparatus shall be deemed to be "incorrect."

[71-108, added 1969, ch. 43, sec. 1, p. 108; am. 1974, ch. 18, sec. 236, p. 364; am. 1990, ch. 37, sec. 1, p. 56.]

71-109. BUREAU OF WEIGHTS AND MEASURES. Within the department of agriculture there shall be a bureau of weights and measures. The director of the department of agriculture shall be the director of weights and measures. He shall appoint an inspection staff of weights and measures inspectors and necessary supervisory, technical and clerical personnel.

[71-109, added 1969, ch. 43, sec. 5, p. 108; am. 1974, ch. 18, sec. 237, p. 364.]

71-110. DUTIES OF DIRECTOR. The director shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by this act, and shall together with the supervisory personnel and the inspectors enforce the provisions of this act and shall keep accurate records of the same. He shall have and keep general supervision over the weights and measures offered for sale, sold, or in use commercially in this state. The director shall report to the governor's office when and as he is required to do so.

[71-110, added 1969, ch. 43, sec. 6, p. 108.]

71-111. REGULATIONS FOR ENFORCEMENT. The director shall issue regulations for the enforcement of this act, which regulations shall have the force and effect of law. The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto of the national conference on weights and measures recommended and published by national bureau of standards or its successor organization, the national institute of standards and technology, from time to time, shall be considered by the director in establishing such regulations and said regulations shall conform as nearly as possible to those recommended by the national bureau of standards or its successor organization, the national institute of standards and technology. The director may by regulations exempt apparatus from any or all of the requirements of this act.

[71-111, added 1969, ch. 43, sec. 7, p. 108; am. 1990, ch. 37, sec. 2, p. 57.]

71-112. TESTING WEIGHTS AND MEASURES USED IN PUBLIC INSTITUTIONS. The director shall from time to time, test all weights and measures used in

checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, report his findings, in writing, to the supervisory board or to the executive officer of the institution concerned.

[71-112, added 1969, ch. 43, sec. 8, p. 108.]

71-113. INSPECTION AND TESTING OF COMMERCIALY-USED WEIGHTS AND MEASURES. The director shall have the power to inspect and test, to ascertain if they are correct, all weights and measures commercially used, kept, offered, or exposed for sale, and to determine the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or of count. The inspection, testing, and determinations here provided for shall be done under a schedule to be drawn up by the director.

[71-113, added 1969, ch. 43, sec. 9, p. 108.]

71-114. INVESTIGATION OF COMPLAINTS OF AND POSSIBLE VIOLATIONS OF ACT. The director shall investigate complaints made to him concerning violations of the provisions of this act, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determinations and on possible violations of the provisions of this act, and shall have the power to subpoena witnesses or take depositions, throughout the state, in relation to investigations or any hearings held by him under this act.

[71-114, added 1969, ch. 43, sec. 10, p. 108.]

71-115. VERIFICATION OF WEIGHT OR MEASURE OF CONTENTS OF PACKAGES -- SAMPLING PROCEDURE -- TAGGING NON-COMPLYING PACKAGES -- SALE OF TAGGED PACKAGES PROHIBITED. The director shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether the same contain the amounts represented and whether they be kept, offered, or exposed for sale or sold in accordance with law. When such packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of the law, the director may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this act, the director may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot. No person shall (1) sell, or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements, or (2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the director.

[71-115, added 1969, ch. 43, sec. 11, p. 108.]

71-116. ENFORCEMENT ORDERS. The director shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures 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 act he deems it necessary or expedient to issue such orders, and no person shall use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under the authority of this section.

[71-116, added 1969, ch. 43, sec. 12, p. 108.]

71-117. SEALING OR MARKING CORRECT WEIGHTS AND MEASURES. The director shall approve for use, and seal or mark with appropriate devices, such weights and measures as he finds upon inspection and test to be "correct" as defined in section [71-108](#), paragraph 12, [Idaho Code,] and shall reject and mark or tag as "rejected" such weights and measures as he finds, upon inspection or test, to be "incorrect" as defined in section [71-108](#), paragraph 12, [Idaho Code,] but which in his best judgment are susceptible of satisfactory repair: provided, that such sealing or marking shall not be required with respect to such weights and measures as may be exempted therefrom by a regulation of the director issued under the authority of section [71-111](#)[, Idaho Code]. The director shall condemn, and may seize and destroy, weights and measures found to be incorrect that, in his best judgment, are not susceptible of satisfactory repair, as provided for in section [71-308](#)[, Idaho Code]. Weights and measures that have been rejected may be confiscated and may be destroyed by the director if not corrected as required by section [71-119](#), [Idaho Code,] or if used or disposed of contrary to the requirements of section [71-119](#), [Idaho Code,] as provided for in section [71-308](#)[, Idaho Code].

[71-117, added 1969, ch. 43, sec. 13, p. 108.]

71-118. SEIZURE OF WEIGHTS, MEASURES OR PACKAGES FOR EVIDENCE. With respect to the enforcement of this act and any other acts dealing with weights and measures that he is or may be empowered to enforce, the director is hereby authorized to seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts or packages of a commodity found to be used, retained, offered, or exposed for sale or sold in violation of law. In the performance of his official duties, the director is authorized to enter and go into or upon, without formal warrant, any structure or premises and to stop any person whatsoever and to require him to proceed, with or without any vehicle of which he may be in charge, to some place which the director may specify.

[71-118, added 1969, ch. 43, sec. 14, p. 108.]

71-119. REJECTED WEIGHTS AND MEASURES -- CORRECTION OR DISPOSAL. Weights and measures that have been rejected under the authority of the director or of an inspector shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section. The owners of such

rejected weights and measures shall cause the same to be made correct within thirty (30) days or such longer period as may be authorized by the rejecting authority; or, in lieu of this, may dispose of the same, but only in such manner as is specifically authorized by the rejecting authority. Weights and measures that have been rejected shall not again be used commercially until they have been officially re-examined and found to be correct, or until specific written permission for such use is issued by the rejecting authority, or until the rejection tag has been removed and the rejected device repaired and placed in service by a person duly registered to perform such acts under a regulation issued by the director for the registration of weights and measures, servicemen and service agencies.

[71-119, added 1969, ch. 43, sec. 15, p. 108.]

71-120. SERVICE FOR FEDERAL GOVERNMENT -- TESTING AND WEIGHING OR MEASURING APPARATUS. (1) The director on behalf of the bureau of weights and measures may with the approval of the governor contract to perform services similar to those provided for by this act for any agency or subdivision of the federal government and may receive on behalf of the bureau of weights and measures funds from any such division or agency of the federal government to cover the expenses incurred in performing such services.

(2) At the request of any person, the director may inspect, test and seal weighing or measuring apparatus in addition to the testing required by law. Any person making such special request shall pay the bureau the necessary expenses incurred by it in making inspections and tests.

[71-120, added 1969, ch. 43, sec. 34, p. 108; am. 1974, ch. 18, sec. 238, p. 364.]

71-121. RULES -- FEES -- WEIGHTS AND MEASURES INSPECTION FUND. The director shall have the authority to promulgate rules to establish fees for the licensing of weighing and measuring devices to compensate the state for the expense of administering weights and measures laws. The director shall collect a reasonable fee not to exceed the actual cost to the state of administering such laws. Fees shall be deposited with the state treasurer and shall be credited to the weights and measures inspection fund, which is hereby created and established. Moneys in the weights and measures inspection fund shall be invested as provided in section [67-1210](#), Idaho Code, and interest earned on investment of idle moneys in the fund shall be paid to the fund. Moneys in the fund shall be used solely for carrying out the provisions of [title 71](#), Idaho Code, and may be expended only pursuant to legislative appropriation.

[71-121, added 2003, ch. 355, sec. 3, p. 951.]