Weighing and Measuring Machines Used in Non-Trade Applications, Including Excise

1.0 Purpose

The purpose of this bulletin is to clarify Measurement Canada’s policy with respect to the inspection of weighing and measuring machines as well as devices defined in the Weights and Measures Act that are used exclusively for non-trade transactions, including those used for the determination of excise duty.

2.0 Background

2.1 Devices that are not used for trade applications, as defined by section 2 of the Weights and Measures Act, do not fall under Measurement Canada’s mandate.

2.2 Some provincial statutes require the inspection and certification of certain weighing and measuring devices by a “Weights and Measures” inspector within prescribed intervals or upon request. Prime example are scales used for weighing vehicles / vehicle axles for the purpose of levying fines for provincial highway weight control.

2.3 It has been determined that using weighing and measuring devices solely for the purposes of determining taxes, duties and imposing fines is not trade, as defined by the Weights and Measures Act.

2.4 Devices used in breweries solely to determine the excise duty payable on alcohol have a special status as per section 28 of the Excise Act. Prior to the coming into force of the Excise Act 2001, section 28 of the Excise Act (which still applies), obligated Measurement Canada to provide inspection services, upon request from an Excise Duty officer, for devices located in all facilities which produced alcohol. Upon the coming into force of the Excise Act 2001, the Excise Act was revised, through the addition of section 1.1, such that it was no longer applicable to any goods or substance other than beer and malt liquor. This means that section 28 of the Excise Act, no longer applies to alcohol produces by distilleries. These two acts are administered by the Canada Revenue Agency (CRA) and the referred sections can be found in the appendix.

2.5 Section 28 of the Excise Act means an Excise Duty officer (CRA inspector) can request that a device (“beams, scales, weights and measures”) be inspected by a Measurement Canada inspector.

The following outlines how inspection requests for non-trade devices will be handled.

3.0 Policy

3.1 Measurement Canada inspection resources should not be devoted to requests for the inspection of non-trade devices. When, based on the trader’s statements, it is clear that the device is not to be used in trade, Measurement Canada representatives will not perform an inspection. Instead, individuals requesting the inspection of a non-trade device should be directed to service agencies that can provide calibration/verification services. The trader must mark the device according to section 4.1 (Marking).
3.2 This policy also applies to weighing and measuring devices used exclusively for the purpose of determining excise duty. It does not apply to devices used for trade purposes or for both trade and excise determination purposes; such trade devices shall be treated as all other devices used in trade applications.

3.3 Upon receipt of a request for an inspection from CRA, directly or through the owner of the device used solely to determine the excise duty:

3.3.1 Measurement Canada must follow its obligations under the *Excise Act* and perform the inspection (initial or subsequent), requested by a CRA inspector, for devices located in breweries or malt liquor producing facilities, regardless if they are initial or subsequent inspections. However, there is no obligation to inspect devices used solely for the determination of excise duty at distilleries, even when requested by an inspector of the CRA.

3.3.2 Such requested inspections are pursuant to Section 15(2) of the *Weights and Measures Act* and inspection fees are applicable.

3.3.3 These inspections are not covered within the scope of the Measurement Canada Authorized Service Providers Programs (accreditation and registration). However, there is nothing prohibiting Authorized Service Providers to perform the inspections as service agencies.

3.3.4 Following these inspections, the Measurement Canada inspector or Authorized Service Provider must issue a statement showing the results of the inspection, instead of a Measurement Canada inspection certificate, as specified in Section 19(1)(b) of the *Weights and Measures Act*.

3.3.5 There is nothing prohibiting a Measurement Canada representative from consulting with the CRA inspector in order to verify if the intended inspection is nothing more than a request to have a suspect device calibrated. In such case, any service company could perform the request without any Measurement Canada involvement.

4.0 Marking

4.1 Any device which is to be used exclusively in a non-trade application must be marked appropriately, by the trader. Where a device is approved but not being used in a trade application, it must be marked “Not for Use in Trade”, as required by section 26 of the *Weights and Measures Regulations*. Where a device is not approved, it must be marked “Not legal for trade”, according to section 23 of the same Regulations.

4.2 No inspection marks nor verification indicators of a sticker type are required on such devices.

5.0 Additional Information

For additional information regarding this bulletin, please contact the Senior Program Officer - Regulatory Affairs. For more information regarding Measurement Canada and its programs, visit our Web site located at http://mc.ic.gc.ca.

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Appendix

Relevant References to Devices Used to Determine Excise Duty

Section 1.1 of the *Excise Act*:

Non-application of Act

1.1   (1) Despite anything in this Act, on the coming into force of Parts 3 and 4 of the *Excise Act*, 2001, this Act ceases to apply in respect of:

(a) the manufacture of any goods or substance other than beer, malt liquor and any product manufactured in accordance with subsection 169(2); and,

(b) the handling of, or the dealing with, anything that is or relates to any goods or substance other than beer, malt liquor and any product manufactured in accordance with subsection 169(2), to the extent that the Excise Act, 2001 applies to that handling or dealing.

Section 28 of the *Excise Act*:

Inspection of Weights and Measures

28. All beams, scales, weights and measures used in or about any premises subject to excise shall be inspected, tested and verified by an inspector of weights and measures as often as any inspector directs, except that scales used in a tobacco or cigar manufactory, when used exclusively for weighing tobacco during any intermediate process of manufacture and not used for weighing raw material brought into the manufactory or taken for use therein, or in ascertaining the manufactured products of the manufactory, may be used without inspection.

(Bolded section is for emphasis purposes only.)

Subsection 169.(2) of the *Excise Act*:

Manufacture of Malt Products

169. (1) ...

(2) No person shall manufacture a product if malt or malt and other ingredients are infused and the resultant wort is used in the manufacturing process, unless a formula is submitted and approved by the Minister, and the person manufacturing the product has, jointly with a guarantee company approved by the Minister, entered into a bond to Her Majesty in the sum of five thousand dollars conditioned on the complete manufacture of the goods in accordance with the formula and compliance with such other conditions as are prescribed by ministerial regulations.