

LOUISIANA WEIGHTS AND MEASURES COMMISSION HEARING
MINUTES

June 24, 2015

9:30 a.m.

Louisiana Department of Agriculture & Forestry
Veterans' Memorial Auditorium
5825 Florida Blvd.
Baton Rouge, LA 70806

I. Call to Order:

Vice Chairman John O'Neill called the hearing to order at 9:35 a.m.

II. Roll Call:

Commission Members present

Mr. John O'Neill, Vice Chairman
Mr. Dave George
Mr. Joseph Al Moreaux
Mr. Marcy LeBlanc Sr.
Mr. Justin Alford
Mr. Nolan Percy
Mr. Frank LoPinto

Members absent

Mr. Mike Miller, Chairman
Mr. Brad Terral

LDAF staff present

Benjy Rayburn, Assistant Commissioner ACS
Stephen O. Sessums, Director of Weights and Measures
Lindsey Hunter, LDAF Legal Counsel
Milton Hunter, Program Manager Weights and Measures
Paul Floyd, District Supervisor Weights and Measures
Tricia Berry, Regional Enforcement Supervisor Weights and Measures
Teri Berken, Weights and Measures Inspector
Steven Coco, Weights and Measures Inspector
Jason Timmons, Weights and Measures Inspector
Joshua Moody, Weights and Measures Inspector
Nicole Robino, Administrative Assistant
Lisa Sonnier, Administrative Assistant

Also in attendance

Michael Vallan, Hearing Officer for Attorney General Office
Karen Canizaro, District Manager for All Brands Case #15-06-05

III. Declaration of Quorum:

Eight members being present Vice Chairman John O'Neill declared a quorum.

IV. Approval of April 29 2015 Minutes:

Motion made by Mr. Marcy LeBlanc and seconded by Mr. Justin Alford to approve the minutes. All members were in favor. Motion carried

V. Public Comment
No public comment

VI. Adjudicatory Hearing:

- (1) **Case No. 15-06-01 (CONTINUED CASE)**
Dollar General #7755
301 Duson Avenue
Iota LA 70543

4 Violations

- 4 - Overcharges - LA. R.S. 3:4617
A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

(2) Case No. 15-06-02
Tiger Touchdown #6
398 Main Street
Arnaudville LA 70512

4 Violations

4- Prices not displayed - LAC 7:XXXV.117

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by a placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

Ms. Lindsey Hunter requested the charge letter along with the certified return receipt be presented and submitted into evidence as LDAF exhibit 1

Ms. Lindsey Hunter called LDAF witness Jason Timmons, Agricultural Specialist with Weights and Measure division to the stand, Mr. Michael Vallan swore in Mr. Jason Timmons

Ms. Lindsey Hunter requested Mr. Jason Timmons to state his name, title and explain his job duties to the Commission. Then Ms. Lindsey Hunter presented the price verification inspection reports dated 08/11/14, 12/30/14, and 04/06/12015 and requested Mr. Jason Timmons to explain each inspection report

Ms. Lindsey Hunter requested the LDAF price verification inspection reports be submitted into evidence as LDAF exhibits 2, 3, and 4

Mr. Michael Vallen stated let the record reflect that LDAF exhibits 1 through 4 have been accepted into evidence.

A recommended fine of \$400.00 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Frank Lopinto and second by Mr. Al Moreaux to accept the recommended fine and penalty. All members were in favor. Motion carried.

(3) Case No. 15-06-03 (CONTINUED CASE)

Dollar General #1544

300 Joe Hoy Drive

Franklin LA 70538

11 Violations

4 - Overcharges - LA. R.S. 3:4617

A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer.

7 - Prices not displayed - LAC 7:XXXV.117

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

(4) Case No. 15-06-04 (CONTINUED CASE)

Dollar General #13870

2100 Hwy 190 West

Deridder LA 70634

4 Violations

4- Overcharges - LA. R.S. 3:4617

A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

(5) Case No. 15-06-05
All Brands
2615 Dillard Loop
Lake Charles LA 70601

13 Violations

4- Overcharges - LA. R.S. 3:4617

A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

9 - Prices not displayed - LAC 7:XXXV.117

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

Ms. Lindsey Hunter requested the charge letter along with the certified return receipt be presented and submitted into evidence as LDAF exhibit 1

Ms. Lindsey Hunter called LDAF witness Steven Coco, Agricultural Specialist with Weights and Measure division to the stand, Mr. Michael Vallan swore in Mr. Steven Coco

Ms. Lindsey Hunter requested Mr. Steven Coco to state his name, title and explain his job duties to the Commission. Then Ms. Lindsey Hunter presented the price verification inspection reports dated 12/23/14, 02/18/15, and 04/10/15 and requested Mr. Steven Coco to explain each inspection report

Ms. Lindsey Hunter requested the LDAF price verification inspection reports, be submitted into evidence as LDAF exhibits 2, 3, and 4

Ms. Lindsey Hunter then allowed Ms. Karen Canizaro, District Manager with All Brands to present her case to the Commission

Ms. Karen Canizaro started by saying they are not disputing the charges, she stated they just moved the Lake Charles store to a new location and the new store manager at the Lake Charles location failed to inform Corporate office of the violations

Ms. Karen Canizaro gave a detailed explanation of the steps they have taken to correct the violations at the Lake Charles store and asked that all fines be dismissed since it was their first offensive

Mr. Michael Vallan stated let the record reflect LDAF exhibits 1 through 4 have been accepted into evidence

A recommended fine of \$3,250 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Dave George and second by Mr. Marcy LeBlanc to accept the recommended fine and penalty. All members were in favor. Motion carried

(6) Case No. 15-06-06
Murphy USA #6689
3441 Nelson Road
Lake Charles LA 70605

19 Violations

6- Overcharge - LA. R.S. 3:4617

A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

13- Prices not displayed - LAC 7:XXXV.117

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

A. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

A stipulated fine of \$5,700 was imposed on the condition that the respondent pay the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Dave George and second by Mr. Justin Alford to accept the stipulation and penalty. All members were in favor. Motion carried.

7) Case No. 15-06-07 (CONTINUED CASE)
Dollar General #2538
118 W. George B Howard Hwy
Oakdale LA 71463

17 Violations

9 - Overcharge - LA. R.S. 3:4617

A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

8 - Prices not displayed - LAC 7:XXXV.117

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

- (8) **Case No. 15-06-08 (CONTINUED CASE)**
Dollar General #13528
6285 Hwy 90 East
Lake Charles LA 70615

12 Violations

- 5- Overcharges - LA. R.S. 3:4617
A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer
- 7 - Prices not displayed - LAC 7:XXXV.117
A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible
- B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

- (9) **Case No. 15-06-09 (CONTINUED CASE)**
Dollar General #759
175 Arlington Street
Bayou Vista LA 70380

5 Violations

- 5- Price not displayed - LAC 7:XXXV.117
A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible
- B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

(10) Case No. 15-06-10 (CONTINUED CASE)
Dollar General #10522
750 Hwy 384
Lake Charles LA 70607

6 Violations

- 4- Overcharge - LA. R.S. 3:4617
 - A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

- 2 - Prices not displayed - LAC 7:XXXV.117
 - A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

 - B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

(11) Case No. 15-06-11 (CONTINUED CASE)
Dollar General #7528
1713 West Street
Vinton LA 70668

7 Violations

4- Overcharges - LA. R.S. 3:4617

A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

3- Prices not displayed - LAC 7:XXXV.117

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

(12) Case No. 15-06-12 (CONTINUED CASE)
Dollar General #2251
380 Sam Houston Jones Parkway
Lake Charles LA 70612

6 Violations

- 1- Overcharge – LA. R.S. 3:4617
 - A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

- 5- Prices not displayed – LAC 7:XXXV.117
 - A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

 - B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

(13) Case No. 15-06-13
Chef Discount Meat Market
10833 Chef Menteur Highway
New Orleans LA 70127

2 Violations

- 1 – Removal of tag unlawfully- LA. R.S. 3:4610
No shall remove from any weight, measure, or weighing or measuring device, contrary to law or regulation, any tag placed thereon by the department.
- 1- Approval or disapproval of apparatus; procedure – LA.R.S. 3:4609 (C)
The owners or users of any weights, measures, or weighing or measuring devices which are condemned for repairs shall have them repaired and corrected within a reasonable period of time specified by the department. During that time, the owners or users may neither use nor dispose of the apparatus in any way, but shall hold it at the disposal of the department.

Ms. Lindsey Hunter requested the charge letter along with the certified return receipt be presented and submitted into evidence as LDAF exhibit 1

Ms. Lindsey Hunter called LDAF witness Joshua Moody, Agricultural Specialist with Weights and Measure division to the stand, Mr. Michael Vallen swore in Mr. Joshua Moody

Ms. Lindsey Hunter requested Mr. Joshua Moody to state his name, title and explain his job duties to the Commission. Then Ms. Lindsey Hunter presented inspection reports dated 03/06/2015 for a complaint on pump jumping and 04/28/2015 a second complaint on pump jumping and requested Mr. Joshua Moody to explain each inspection report

Ms. Lindsey Hunter requested the LDAF inspection reports, be submitted into evidence as LDAF exhibits 2 and 3

Mr. Michael Vallen stated let the record reflect LDAF exhibits 1 through 3 have been accepted into evidence

A recommended fine of \$1,000 was imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Marcy LeBlanc and second by Mr. Frank LoPinto to accept the recommended fine and penalty. All members were in favor. Motion carried.

(14) Case No. 15-06-14
Family Dollar #8185
1521 Highway 90 West
Vinton LA 70668

6 Violations

1- Overcharge – LA. R.S. 3:4617

A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

5– Prices not displayed – LAC 7:XXXV.117

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

Ms. Lindsey Hunter requested the charge letter along with the certified return receipt be presented and submitted into evidence as LDAF exhibit 1

Ms. Lindsey Hunter called LDAF witness Tricia Berry, Regional Enforcement Supervisor Weights and Measure division to the stand, Mr. Michael Vallan swore in Ms. Tricia Berry

Ms. Lindsey Hunter requested Ms. Tricia Berry to state her name, title and explain her job duties to the Commission. Then Ms. Lindsey Hunter presented the price verification inspection reports dated 12/23/2014, 04/02/2015, and 05/22/2015 and requested Ms. Tricia Berry to explain each inspection report

Ms. Lindsey Hunter requested the LDAF price verification inspection reports, be submitted into evidence as LDAF exhibits 2, 3, and 4

Mr. Michael Vallen stated let the record reflect LDAF exhibits 1 through 4 have been accepted into evidence

A recommended a fine of \$900.00 be imposed on the condition that the respondent pays the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination

Motion made by Mr. Al Moreaux and second by Mr. Justin Alford to accept the recommended fine and penalty. All members were in favor. Motion carried.

(15) Case No. 15-06-15 (CONTINUED CASE)

Dollar General #8694
220 N. Huntington Street
Sulphur LA 70663

6 Violations

3 – Overcharges – LA. R.S. 3:4617

A. No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer

3 – Prices not displayed – LAC 7:XXXV.117

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible

B. The price displayed on the shelf, commodity or item required by subsection A of this section shall be precisely equal to the price actually charged by the seller

VII. NEW BUSINESS – fine matrix

Mr. Steve Sessums explained the new fine matrix, which is based on the penalty accuracy rate and the number of times their stores have been brought before the Commission. Mr. Steve Sessums answered any questions the Commission had in regards to the new fine matrix system.

VIII. OLD BUSINESS

Mr. Benjy Rayburn updated the Commission members on the 2015/2016 Legislative session, which pertained to the budget for the Department. However, our Office of Agro-Consumer Services & Weights and Measures division we are primarily self-funded so our office was not affected by the states General fund cuts.

Mr. Benjy Rayburn discussed some regulations changes we are looking at:

- 1.) Once fuel at a gas station is condemned from sale, to put some restrictions in place and better documentation to track the condemned fuel
- 2.) Definitions to be added for biomass-based diesel, and fuel alternative fuels on the market place

Mr. Benjy Rayburn informed the Commission we did have one piece of Legislative that is waiting on the Governor's signature, which amends the Weights and Measures Law title-3 chapter 30 that says the Commissioner of Agriculture should have the duty and authority to assist the Secretary of the Department of Revenue in collecting taxes and any interest or penalties due This deals with sale of compressed natural gas, which our Department Laws exclude us from regulating.

Mr. Steve Sessums informed the Commission that gas card skimmers and gas pump skimmers are here in our State

IX. PUBLIC COMMENTS

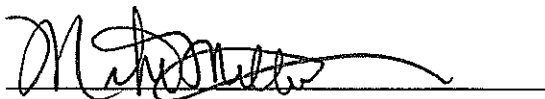
No public comment

X. FUTURE HEARING DATE

Next Commission Hearing scheduled for Wednesday October 7, 2015 @ 9:30 am

XI. ADJOURNMENT:

Motion made by Mr. Justin Alford and second by Mr. Dave George to adjourn. All members were in favor Motion carried.


Mr. Mike Miller Chairman