

**VI. NCWM Policy, Interpretations, and Guidelines, Section 2  
Excerpts from NCWM Publication 3**

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## NCWM Policy, Interpretations, and Guidelines

### Introduction

This section of the handbook includes NCWM interpretations, policies, recommendations, inspection outlines, and information on issues that have come before the Conference. Several sections include information on federal requirements related to the uniform laws and regulations presented in the handbook. The purpose of this section is to assist users in understanding and applying the uniform regulations and to guide administrators in implementing new programs or procedures. The guidelines or recommendations provided should not be construed to redefine any state or local law or limit any jurisdiction from enforcing any law, regulation, or procedure (unless the section describes a specific federal regulation that preempts local requirements).

(Added 1997)

#### 2.1.1. Weight(s) and/or Measure(s).

(L&R, 1985, p. 77)

The measuring elements of a point-of-sale system are “weights and/or measures.” Errors in pricing when found in point-of-sale systems come under “Misrepresentation of Pricing” in the weights and measures law and are under the jurisdiction of weights and measures.

### Background

A recommendation was made to change the definition of “weights and measures” in the Uniform Weights and Measures Law to specifically define a scanner or point-of-sale system as under weights and measures jurisdiction.

Several state representatives said that they had enforcement problems when a scanner or point-of-sale system was being used and when the price marked on an item (or on the shelf) was not the same as the price printed on the receipt. These officials believe that unless the law specifically defines these devices as “weights and measures,” they have no jurisdiction over the devices’ function.

The Committee disagreed. The NCWM Uniform Weights and Measures Law has a section that forbids the practice of a different price on the retail shelf as compared with the price provided by a scanner. Section 15 of the Uniform Weights and Measures Law reads:

*No person shall misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.*

This section (plus Section 14 forbidding misrepresentation of quantity), if enacted by a state, already provides enforcement authority over scanners and point-of-sale systems.

In addition, the Committee does not want to set a precedent by listing by name the types of devices that might be considered weights and measures devices. This might provide a potential “loop-hole” for those devices not specifically listed. Finally, the Committee members pointed out that it is the human element (the person reading in data or receiving price updates) that introduces the discrepancies in shelf and receipt prices rather than any inherent incapability of the reading device or scanner. Therefore, it is much more effective to forbid the practice of mispricing rather than focus on a single device or apparatus as the means for obtaining compliance.

**2.1.2. Section 19(a), Identity.**

(L&amp;R Committee, 1986, p. 143)

Packaged food not containing meat or poultry does not have to have an identity statement if the identity of the commodity can easily be identified through the wrapper or container.

**Background**

Virginia Weights and Measures recommended revision to Section 19(a) of the Uniform Weights and Measures Law (UWML) to eliminate the exemption of an identity statement from packages when the item “can easily be identified through the wrapper or container.” The Committee is of the opinion that there is merit in retaining the language in Section 19(a) of the Uniform Law. Packages of fresh product packaged in a retail establishment are considered to be packages as long as a price is attached. If the exemption were eliminated, such packages instead of being marked, for example, “12/89 cents” would have to be marked “lemons, 12/89 cents.” It was argued that there could be a problem in deciding whether or not a commodity could “easily be identified” (such as might occur in an ethnic specialty grocery or with an exotic produce item). In researching the issue, the Committee has determined that Title 21, Section 101.100(b)(3) of the Code of Federal Regulations specifically exempts the food identity statement from having to appear “. . . if the common or usual name of the food is clearly revealed by its appearance.” Since no specific problems of enforcement were brought to the attention of the Committee concerning this issue, the Committee recommends no change to Section 19(a) at this time. However, the Committee recommends that Section 3.1. and 4. of the Uniform Packaging and Labeling Regulation be noted as follows:

*Section 19(a) of the Uniform Weights and Measures Law, and 21 CFR 101.100(b) (3) for non-meat and non-poultry foods, specifically exempt packages from identity statements if the identity of the commodity “can easily be identified through the wrapper or container.”*

**2.1.3. Definition of Net Weight.**

(L&amp;R, 1987, p. 123)

1. It is the intent of this definition to include truck-loads of commodities, not just packages (“containers”).
2. It is not the intent to define the net weight of packaged goods as requiring dry tare (“. . . excluding . . . substance(s) not considered to be part of the commodity” could just as well be interpreted as excluding liquids not considered part of the commodity at the time of sale).
3. It is also the intent to permit more specific definitions as the occasion warrants (“. . . material(s) . . . not considered . . . part of the commodity” might include dirt or “foreign material” in a commodity).

**2.1.4. Offenses and Penalties, Sale of an Incorrect Device.**

(L&amp;R, 1987, p. 124)

A jurisdiction seeking to enforce the provision of the Uniform Weights and Measures Law that prohibits the sale of an incorrect device would have to show that the seller knowingly sold or offered for sale for use in commerce an incorrect weight or measure. Under Section 22, a seller would not be responsible for actions taken by the purchaser or distributor, in which the seller did not participate or have prior knowledge. Thus, the seller would not be liable:

- (1) if a purchaser or distributor modified a scale obtained from a seller; or
- (2) if a scale were used in trade after the seller informed the purchaser that the scale was not appropriate for that use.

In cases such as those noted above, the Committee feels that the seller would be protected from prosecution. Only sellers who knowingly violate the provision would be subject to prosecution.

**2.1.5. Weight: Primary Mill Paper.**

(L&R, 1990, p. 81)

**Interpretation**

Non-consumer sales of “primary mill paper” were discovered by weights and measures officials to be labeled and invoiced on what was called a “gross weight” basis. Primary mill paper is produced for commercial or industrial companies for subsequent additional processing, such as paper for newspaper or magazine publishers or sanitary tissue manufacturers. The primary mill paper is cut from “parent rolls” but is still a commercial-sized item weighing from several hundred to several thousands of pounds.

The key to understanding the longstanding trade practice is that the purchaser of such paper specifies not only the quality of the paper being purchased, such as the thickness, surface coating, etc., but the purchaser also specifies the core around which the paper is to be wound, the type of overwrap, the number of overwraps, and such other requirements that will ensure receipt of the primary mill paper in proper condition for subsequent processing. The weight of the core and wrapping is approximately 1 % of the gross weight. It is recycled by the purchasers in their own or other paper recovery or reuse systems.

Having reviewed the practices in the industry in the specification and purchasing of primary mill paper, the Committee concludes that the true product is the paper plus the packaging (in order to assure maintenance of quality) and an appropriate core (to ensure a fit on the recipient’s equipment). Therefore, in the Committee’s opinion, the sale of primary mill paper is not at all on a gross weight basis. This is and has been a misnomer. The true identity of the purchased product has been misunderstood by weights and measures authorities, further compounded by the industry use of the term “gross weight.” The product is the primary mill paper plus the core and overwrap specified by the purchaser.

The Committee, therefore, believes that the industry should review its invoicing and labeling to clarify that the weight of the specified product is the weight of the primary mill paper, core, and overwrap. Although this weight is the gross weight of the entire item as produced and shipped, it is the net weight of the item as specified by the purchaser.

This interpretation applies only to primary mill paper and is not intended to be applied to all non-consumer products ordered by specification; it is a narrow interpretation applying to the specific method of sale in this trade where the service of packaging and the packaging is part of the purchase.

**2.2.1. Gift Packages.**

(Resol. 1975, p. 237)

See also Interpretation 2.2.8.

**Interpretation**

Seasonal gift packages are often put up in retail stores in baskets and other decorative containers using cellophane or other clear flexible wrap to enclose a number of similar or dissimilar prepackaged items (for example: cheese, jellies, sausages, wine, fruit, etc.). The resulting combination or variety package must have a legally conforming label including the net contents statement.

**2.2.2. Sand.**

(L&R, 1978, p. 151)

**Interpretation**

Sand put up in permanent wooden bins is a consumer package and must be labeled with all mandatory information as required by the Uniform Packaging and Labeling Regulation.

### **Background**

The State of Hawaii raised the issue of the sale of sand in permanent wooden bins and sold by price per cubic measure. The Committee agrees with Hawaii that the sale of sand in this manner is subject to the Uniform Packaging and Labeling Regulation, under the definition of “Consumer Package” (Section 2.2. of the Uniform Packaging and Labeling Regulation) and that no further action is needed.

#### **2.2.3. Sold by $\frac{4}{5}$ Bushel.**

(L&R, 1974, p. 220)

### **Interpretation**

The trade practice of crating citrus fruit in  $\frac{4}{5}$  bushel units is a long-standing one. It is not intended to be a consumer package. If offered as a consumer package, the general consumer usage and trade custom in the particular state would have to be explored:

Section 6.10.(b)(1) of the Uniform Packaging and Labeling Regulation would permit a declaration employing different fractions in the net quantity declaration other than those permitted under Section 6.10.(b) if there exists a firmly established practice of using  $\frac{4}{5}$  bushel in consumer sales and trade custom.

### **Background**

It has been called to the attention of the Committee that certain commodities are being sold to consumers in “unacceptable” fractional units of dry measure in violation of Section 6.10. of the Uniform Packaging and Labeling Regulation. Specifically, the Committee has been asked for an interpretation as to whether the packaging of oranges in a  $\frac{4}{5}$  bushel, which is later sold unweighed to a consumer, is a violation of the binary submultiple principle as implied in Section 6.10.(b). Some Committee members asserted that a clear exception exists under Section 6.10.(b)(1) which applies to this long established tradition of crating citrus fruit in  $\frac{4}{5}$  of a bushel. Approximately 85 % of this fruit is sold by this trade practice. Additionally, it was asserted that the packager never intended the  $\frac{4}{5}$  bushel to be a consumer package, but if the  $\frac{4}{5}$  bushel of citrus fruit is sold to consumers, this would be a matter between the appropriate state or local official and the retailer.

The consensus of the Committee is that this action of the packagers is not in violation of the indicated section.

#### **2.2.5. Lot, Shipment, or Delivery.**

(L&R, 1981, p. 95)

### **Policy**

The requirements for the average package net contents to meet or exceed the labeled declaration may be applied to production lots, shipments, or deliveries. Shipments or deliveries are smaller collections of packages than production lots that may or may not consist of mixed lot codes.

Emphasis in inspection activities should be placed on warehouse and in plant testing without neglecting retail consumer protection.

### **Background**

The Committee heard a petition from the California Brewers Association to define a lot as:

*...a selection of containers under one roof produced by a single company of the same size, type and style, manufactured or packed under similar conditions with a minimum number to be equivalent to one production line shift.*

The intention of the petition is to focus Weights and Measures enforcement on production lots as opposed to small collections of packages on retail shelves, because the production lot is under the control of the packager.

An alternative proposal was made that would require mingling of lot and date codes in package inspection at warehouse locations.

The Committee has reviewed the proposals in light of Section 7.6. and Section 12.1. of the Uniform Packaging and Labeling Regulation which refers to “shipment, delivery, or lot.” If the petition is approved, the terms “shipment” and “delivery” would have to be dropped from this Uniform Regulation.

The Committee recognizes the inherent value of in-plant and warehouse inspection and is of the opinion that, wherever possible, such inspections should be carried out. At the same time, the Committee recognizes the need for the state and local weights and measures officials to protect the consumer at the level where the ultimate sale is made. Therefore, the Committee recommends no change to the Uniform Regulation.

The Committee looks forward to the work of the Special Study Group on Enforcement Uniformity of the NCWM which will be exploring the mechanisms that might be instituted to make in-plant inspection workable.

#### **2.2.6. Aerosols and Similar Pressurized Containers.**

(L&R, 1976, p. 248)

See also Guideline 2.2.7.

#### **Interpretation**

It is the opinion of the NCWM that an FDA opinion as expressed in the Fair Packaging and Labeling Act Manual Guide FDA 7563.7, not objecting to volume declarations on aerosol products, does not supersede or preempt state requirements that aerosols be labeled by net weight.

#### **Background**

The Department of Commerce through the Office of Weights and Measures of the National Institute of Standards and Technology, under its statutory responsibility for “cooperation with the states in securing uniformity in weights and measures laws and methods of inspection,” developed Section 10.3.

**10.3. Aerosols and Similar Pressurized Containers.** – The declaration of quantity on an aerosol package and on a similar pressurized package shall disclose the net quantity of the commodity (including propellant), in terms of weight, that will be expelled when the instructions for use as shown on the container are followed.

Several states, which are among the 32 that have adopted the Uniform Packaging and Labeling Regulation, indicated that pressurized cans were currently being marked by volume rather than by weight as required above. Industry representatives indicated that according to the FDA, they are permitted to mark this type of container by volume and that for competitive purposes they will continue to do so. The NCWM was asked to contact FDA and inform them that a declaration of volume on pressurized containers is not acceptable to the states since it cannot be verified.

A meeting was requested to express NIST/NCWM’s concern over the FDA position on quantity of contents declarations on aerosols, which is found in the Fair Packaging and Labeling Act (FPLA) Manual Guide FDA 7563.7. This Guide states that in the past, the FDA has not objected to the use of units of volume to declare the net contents of aerosol preparations that would be liquid if not combined with the propellant and a net weight statement in avoirdupois units for products that would be solids if not combined with a propellant. The FDA was asked to modify its position to provide that existing state regulations (concerning aerosol quantity of contents declarations) are not superseded by FDA Guidelines. FDA officials stated that the FDA would consider the request, but it did not appear at the time of the Interim Meetings that the FDA would make any statement to modify its position without following its administrative procedures and permitting interested parties to exhaust every element of due process.

One industry representative stated that there has been a good deal of concern that fluorocarbon propellants may in the long run cause the partial destruction of the ozone layer in the upper atmosphere surrounding the earth, and that the diminution of the ozone layer would have adverse effects on human health. Therefore, they have converted to new formulations which eliminate fluorocarbon propellants. As a result of this conversion to a non-fluorocarbon propellant system, which uses a propellant with a much lower density than that of the usual fluorocarbon propellants, continued use of a weight measure would be highly misleading to the consumer. Therefore, some spray labels have been changed so as to denote the contents in terms of fluid measure, rather than in terms of weight measure.

The industry representative stated that if manufacturers were to be required to use weight measure, consumers would be deceived into buying products, such as hair spray, with large amounts of fluorocarbon that vaporizes before it reaches the hair. Consumers prefer products with a large amount of base. Industry further indicated that they wanted to avoid a confrontation with the states over this issue and believe that the matter can readily be resolved without the need for litigation. Although the use of fluid measure on the principal panel will give consumers the most helpful information at the point of purchase, the industry would have no objection to putting the net weight on the back of the label.

The Committee wants to commend FDA for their interest in this matter and the manufacturers who seek to improve their product and its labeling information. The Committee is also encouraged to work with all interested parties to resolve this issue. However, the Committee does not believe that mere guidelines can preempt a Uniform Regulation developed under the technical authority of the federal agency delegated by Congress and adopted by the states through its representatives, no matter how broad the preemptive clause of an act might be. Additionally, the Committee cannot support open and notorious violations of state regulations where those violations occurred prior to bringing the issue before the Conference. Therefore, the Committee believes that NCWM should support a firm stand by the states that their regulations must be respected.

#### **2.2.7. Aerosol Packaged Products.**

(Liaison, 1979, p. 239)

See also Guideline 2.2.6.

#### **Policy**

The NCWM recommends all aerosol packages be labeled by net weight. FDA permits volume declarations. The NCWM has requested the FDA to change its regulations and revise its interpretation of these regulations.

#### **Substance of Petition**

The NCWM petitions the FDA to make the necessary changes to their regulations and interpretation of 21 CFR 101.105(g) as appearing in the FDA Fair Packaging and Labeling Manual Guide, 7563.7 pertaining to the quantity of contents declaration on aerosol packaged products. It is requested that the net quantity statement on aerosol packaged products or similar pressurized packages be made in terms of net weight only. The reasons for recommending such changes are as follows:

1. Net quantity labeling of aerosol packaged products in terms of net weight is a firmly established trade practice for such products.
2. Net quantity labeling of aerosol packaged products in terms of volume is difficult (if not impossible) to verify with consumer verification methods or by conventional package inspection methods. State or local enforcement action is discouraged by such labeling.
3. Since the labeling of aerosol packaged products by volume cannot be compared with the labeling of such products in terms of net weight, labeling in terms of volume and weight inhibits value comparisons and causes consumer confusion with respect to the quantity of product the consumer is buying and can be a form of deceptive labeling.



4. Uniformity between all state and federal regulations is highly desirable for both enforcement and fair competition in the marketplace. The Uniform Packaging and Labeling Regulation and the FTC and EPA Regulations require net quantity labeling of aerosol packaged products in terms of net weight.

### **2.2.8. Variety and Combination Packages.**

(L&R, 1982, p. 149)

See also Guideline 2.2.1.

#### **Interpretation**

- (a) Seasonal gift packages are “variety packages” within the meaning of the Uniform Packaging and Labeling Regulation if they contain “reasonably similar commodities” (such as various fruits). They are “combination packages” if they contain “dissimilar commodities” (such as wine, fresh fruit, and jellies). Variety package labels must declare the total quantity in the package. Combination package labels must declare a quantity declaration for each portion of dissimilar commodities.
- (b) The example provided with Section 10.6., Variety Packages, of the Uniform Packaging and Labeling Regulation, shows a total quantity declaration and individual declaration for each type of commodity. The individual declaration is not required but is encouraged.

#### **Background**

The Committee reviewed Section 10.5 and Section 10.6 of the Model Packaging and Labeling Regulation in order to determine the need for further clarification. Several questions have arisen over the years with respect to:

- (1) What are the net contents labeling requirements for seasonal gift packages composed of varying types of commodities or goods all combined into one package?
- (2) Is the example provided in Section 10.6. entirely in keeping with the declaration requirements? (This section requires that total net contents be declared, but the example shows both total and individual net contents.)

The Committee believes that there is no need to modify these sections, but the discussions below may serve as guidance to enforcement officials and packagers on these sections.

Concerning labeling requirements for seasonal gift packages, it must first be determined what the individual units comprising each package are. The following examples are possibilities:

- (a) individual packages of sausage, individual packages of cheese;
- (b) several kinds of fruit of different weights; and
- (c) several kinds of fruit, bottle of wine, several packages of cheese.

Examples (a) and (c) above are combination packages and should be labeled with net quantities of each unit or type of unit. It is possible to combine fruit net weight (or count if appropriate) as one declaration, cheese net weight as a second declaration, etc.

Example (b) above is a variety package and must be labeled with the total net weight or count (as appropriate) of fruit in the package. It is also reasonable for packagers to include, for full consumer information, a declaration of the individual net contents of each type of package or item in the gift package although this latter declaration is not required (e.g., 1 lb bananas, 3 pears). This is also the key to the second question asked above concerning the example provided in Section 10.6.; that is, although a declaration of individual item net contents is not required, packagers are encouraged to provide additional information wherever useful to the consumer.

**2.2.9. Textile Products.**

(L&amp;R, 1977, p. 215)

**Interpretation**

- (a) When a range of widths (e.g., 58/60) appears on the label of bolts or rolls for yard goods, enforcement action should be taken whenever the action width falls below the lesser of the two widths given as the range (in the example above, when the fabric width is less than 58 in).
- (b) Section 10.9.3. Textiles: Variations from Declared Dimensions of the Uniform Packaging and Labeling Regulation is not to be interpreted as providing tolerances. The average requirement must be met. The average quantity of contents of a lot, shipment, or delivery must equal or exceed the declared dimensions. Dimensions of individual packages of textiles may vary as much as Section 10.9.3. permits, but the average requirement must still be met.

**Background**

The State of California and the American Textile Manufacturers Institute asked the NCWM Laws and Regulations Committee and the National Institute of Standards and Technology to assist in the resolution of two textile-product issues. In the first issue California asks for help in correcting a short measure condition, apparently a nationwide problem, which has been found in the packaging and labeling of textile yard goods put up on bolts or rolls.

The problem is outlined as follows:

1. Approximate width measurements are being used by some manufacturers in their label declarations.

**Example:**

58/60 in (inch) width.

2. Label declarations are false and misleading in that actual amounts are less than the quantity represented on the label.
3. Section 10.9.3. of the Uniform Packaging and Labeling Regulation is extremely vague as to its intent and true meaning. Are the substantial variations (3 % and 6 %); (6 % and 12 %) permitted as product tolerances, or are they maximum unreasonable minus and plus errors to be allowed when sampling the product for quantity when using Handbook 67?

California favors the repeal or clarification of Section 10.9.3. and suggests amending Section 10.9.2.(k) to read:

*The quantity statement for packages of textile yard goods packaged on the bolt or roll for either wholesale or retail shall state its net measure in terms of yards for the length and width of the item, or its net weight in terms of avoirdupois pounds or ounces, or in terms of their metric equivalent.*

During the Interim Meetings, a representative of the American Textile Manufacturers Institute (ATMI) informed committee members that the proposal to identify the width of yard goods with a single measurement (as opposed to a range) would be given serious consideration by their members, after which a recommendation will be finalized and submitted to the Laws and Regulations Committee.

After the Interim Meetings, the National Home Sewing Association said that if a single width declaration is required, the following could result:

- (a) No change in manufacturing process would be effectuated; only the size declaration on bolts would be changed.

- (b) Short measure problems could be created because consumers would look for the fabric to be exactly the stated width. Because the manufacturing processes were not changed, the width is actually the same as it was with the range declaration.
- (c) Increased cost to manufacturers would result. One loom is used for many different fibers now; a single width declaration could create a need for many looms for each of the different fibers, thereby imposing “pass-along” costs to consumers.
- (d) Consumer deception would be fostered in that a single declaration implies actual measurement.

California officials state that roll or bolt fabric should be labeled accurately with a single declaration. Additionally, they believe that industry does have enough shrinkage data on fibers used in the manufacturing processes, and thus could provide accurate measurement declaration on finished fabrics or materials.

The Committee believes that accurate quantity information should be provided on consumer products; however, no labeling changes should be required until patterns and yard goods are marketed in metric units. At that time, all measures shall be singularly stated (eliminating dual numbers) and, until that time, any products where size declaration is a range and found to be less than the smaller of the range declaration shall be subject to enforcement action. For example, a product marked “58 to 60 in” and found to be less than 58 inches should be considered to be in violation of weights and measures laws and/or regulations.

Additionally, the Committee affirms that the intent of the Variations from Declared Dimensions permitted in Section 10.9.3. in no way eliminates the requirement that quantity declarations for textiles must, on the average, not be less than declared declarations.

#### **2.2.10. Yarn.**

(L&R, 1983, p. 153)

##### **Interpretation**

The appropriate net contents declaration for yarn is weight.

##### **Background**

A consumer has requested that the net quantity statement for yarn be changed from weight to length. The proposal is based on the consumers’ use of the product, darker colors often weigh more per unit of length. Therefore, they found that a lighter color yarn will “go farther” in craft applications than a darker yarn; consumers indicate that it is difficult to predict how much yarn of varying colors to purchase based on a weight declaration. The Committee is sympathetic to the request but must support existing labeling requirements for several reasons.

Yarn, by nature, is extremely stretchy; in order to label yarn by length, a specified tension would have to be applied in order to make any repeatable length measurement. Such a tension would have to be agreed upon by all the yarn manufacturers, and they would have to apply to compliance testing of product by weights and measures officials. Even if this tension “standard” were negotiated and decided upon, it would have little real meaning in use by needle crafters, knitters, and others. The tension applied to yarn in use varies from user to user and from application to application; therefore, the length also varies. Not only does dyeing yarn change the weight, dyeing also changes the length of yarn. For these reasons, industry representatives also support the requirements as they presently are written in the Uniform Packaging and Labeling Regulation.

The Committee recognizes the difficulty of working with this product and suggests that users of yarn consider buying an excess of the yarn over what is expected to be used in any application. The consumers should find out before purchase if, after finishing the product, they can return the unopened skeins to the retailers from whom the skeins were purchased.

**2.2.11. Tint Base Paint.**

(L&R, 1986, p. 146)

Section 11.23. of the Uniform Packaging and Labeling Regulation currently permits tint base paints (paints to which colorant must be added prior to sale) to be labeled in terms of the volume (a quart or gallon) that will be delivered to the purchaser after addition of the colorant only if three conditions are met:

1. “the system employed ensures that the purchaser always obtains a quart or a gallon”;
2. “a statement indicating that the tint base paint is not to be sold without the addition of colorant is presented on the principal display panel;” and
3. “the contents of the container, before the addition of colorant, is stated in fluid ounces elsewhere on the label.”

**2.2.12. Reference Temperature for Refrigerated Products: When a Product is Required to be Maintained under Refrigeration.**

(L&R, 1990, p. 86)

**Background**

Section 6.5.(b) was revised to clarify that the reference temperature of 4.4 °C (40 °F) applies only to products that must be refrigerated to maintain product quality, rather than to items, such as carbonated soft drinks, that are refrigerated for the purchaser’s convenience.

**Guideline**

The Committee also discussed how an inspector could decide whether a product under refrigeration is required to be maintained under refrigeration. The following guidelines are provided:

1. The traditional food items that normally require refrigeration and are found in refrigerated cases will not ordinarily have any statement about requiring refrigeration. These items include milk, orange juice, and similar products. They may be tested at any temperature at, above or below their reference temperature of 40 °F (4 °C) because such products are at their maximum density at their reference temperature, and the volume of such products will always increase at higher or lower temperatures. Thus any errors made by not measuring at the exact reference temperature will be in the favor of the packer.
2. Food items that normally require refrigeration, but which are processed so as not to require refrigeration prior to opening, will have “refrigerate after opening” or similar wording on the label. Such items as milk and orange juice can be found in this category as well as in the “refrigeration required” category. The two categories can be distinguished by the “refrigerate after opening” statement, which calls for testing at or above their reference temperature of 68 °F (20 °C).
3. Food items that are not expected to require refrigeration, but which may be refrigerated for the convenience of the consumer (such as carbonated beverages), are to be tested at temperatures of 68 °F (20 °C) or above even when found refrigerated for the convenience of the consumer.

**2.2.13. Declaration of Identity: Consumer Package (UPLR) and 1.5.1. in Combination with Other Foods (UMSCR).**

(L&R, 1990, p. 93)

**Background**

Many food products are made by the retail store and labeled with names that may or may not have standards of identity or standards of composition in federal regulation or policy (for example, chicken cordon bleu). Weights and

measures officials need to know which names have standards of identity that must be followed in formulating the product and, therefore, in providing the ingredient statement.

### **Food Standards**

The U.S. Department of Agriculture's Food Safety and Inspection Service (USDA - FSIS) and the U.S. Department of Health and Human Services' FDA share the responsibility of assuring truthful and accurate information on product labels. USDA - FSIS has responsibility for the development and application of the labeling requirements applicable to meat and poultry products containing more than 3 % fresh meat or at least 2 % cooked poultry meat. FDA oversees the labeling of most other food products.

### **USDA Standards of Identity and Composition**

USDA has statutory authority to establish standards of identity for meat and poultry products. A standard of identity prescribes a manner of preparation and the ingredients of a product that is labeled with a particular name. A food that bears the name of a standardized food that does not satisfy the requirements of the applicable standard is misbranded. Examples of standardized products include: "Ham," "Ham Water Added," "Hot Dogs," "Chicken and Noodles," and "Spaghetti Sauce with Meatballs."

Almost all standards enforced by FSIS are called "standards of composition." These standards identify the minimum amount of meat or poultry required in a product's recipe. For example, the standard of composition for "beef a la king" states that, if a product carries this name on its label, at least 20 % cooked beef must be used in the recipe.

But standards of composition do not prevent a manufacturer from increasing the meat or poultry content or adding other ingredients to increase a product's appeal. For instance, a processor has the option of using more than the required amount of beef in beef a la king and adding other ingredients to make the product unique. A listing of meat and poultry content and labeling requirement including terms that are further defined can be found in the USDA FSIS Food Standards and Labeling Policy book which is available at [www.fsis.usda.gov/OPPDE/larc/Policies/Labeling\\_Policy\\_book\\_082005.pdf](http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_book_082005.pdf).

### **Label Approval**

Food manufacturers are responsible for compliance with the FSIS labeling rules and adherence to the process maintained by FSIS for the evaluation and approval of meat and poultry product labels. This Guide provides the basic information necessary to devise a label for meat and poultry products and to understand the regulatory process administered by FSIS. A Guide to Federal Food Labeling Requirements for Meat and Poultry Products (2007) URL is located at [www.fsis.usda.gov/PDF/Labeling\\_Requirements\\_Guide.pdf](http://www.fsis.usda.gov/PDF/Labeling_Requirements_Guide.pdf).

#### **2.2.14. Typewriter and Computer Printer Ribbons and Tapes.**

(L&R, 1991)

### **Interpretation**

Typewriter and computer printer ribbons must be labeled by length. In addition, character yield information may be disclosed on the principal display panel.

### **Background**

Packages of typewriter and computer printer ribbons and tapes have been found in the marketplace with no declaration of quantity of any kind. There is information on the package about the type of machine the ribbon or tape is designed to fit, but this is not a declaration of quantity. Purchasers have been misled as a result of the failure of some manufacturers to disclose the length; ribbons designated for a particular machine may be sold at a low price, but with substantially less length than ribbons ordinarily produced for the machine.

**2.3.1. Instant Concentrated Products.**

(L&R, 1977, p. 219)

**Interpretation**

No additional net contents information (other than weight) is required for instant coffee, tea, and cocoa.

**Background**

It was proposed that certain products, such as instant coffee, tea, and cocoa, should have a dual statement of weight including the number of cups (e.g., makes ten 6 oz cups).

The National Coffee Association of U.S.A., Inc., offered the following comments:

1. The number of servings of instant coffee will depend upon the size of the cup involved and the taste of the individual consumer.
2. The size of a cup will vary widely, ranging from a small “demitasse” cup to a large coffee mug.
3. The taste of the individual consumer defies definition because it will vary as widely as the number of individuals considered. Market research shows many like it “strong and black” and others prefer it “mild and thin.”
4. Any statement placed on a container of instant coffee that represents that the consumer will be able to obtain a specified number of servings would be arbitrary, confusing and, in a very sense, deceptive.
5. In view of the foregoing, any such requirements that the number of servings be listed on a container of instant coffee might expose the manufacturer to complaints from consumers that it was engaging in an unfair and deceptive practice.

Other issues that the Committee discussed included the authority to require precise directions (rather than, for example, 2 to 3 heaping teaspoons) and the issues of product variability and uniform enforcement.

**2.3.2. Fresh Fruits and Vegetables.**

(L&R, 1979, p. 176; 1980; 1982, p. 152; 2008)

**Guideline**

Recognizing the difficulty faced by consumers when more than one method of sale is employed in the same outlet for the same product, non-comparable methods of sale (e.g., weight and measure) for the same produce item in the same outlet should be minimized.

This guideline applies to all sales of fruits and vegetables. There are two tables, one for specific commodities and one for general commodity groups. Search the specific list first to find those commodities that either do not fit into any of the general groups or have unique methods of sale. If the item is not listed, find the general group in the second table. The item may be sold by any method of sale marked with an X.

(Amended 2008)

<b>Method of Retail Sale for Fresh Fruits and Vegetables Specific Commodity</b>					
<b>Commodity</b>	<b>Weight</b>	<b>Count</b>	<b>Head or Bunch</b>	<b>Dry Measure (any size)</b>	<b>Dry Measure (1 dry qt or larger)</b>
Artichokes	X	X			
Asparagus	X		X		
Avocados		X			
Bananas	X	X			
Beans (green, yellow, etc.)	X				X
Brussels Sprouts (loose)	X				
Brussels Sprouts (on stalk)			X		
Cherries	X			X	X
Coconuts	X	X			
Corn on the Cob		X			X
Dates	X				
Eggplant	X	X			
Figs	X				
Grapes	X				
Melons (cut in pieces)	X				
Mushrooms (small)	X			X	X
Mushrooms (portobello, large)	X	X			
Okra	X				
Peas	X				X
Peppers (bell and other varieties)	X	X			X
Pineapples	X	X			
Rhubarb	X		X		
Tomatoes (except cherry/grape)	X	X			X

Method of Retail Sale for Fresh Fruits and Vegetables General Commodity Groups					
Commodity	Weight	Count	Head or Bunch	Dry Measure (any size)	Dry Measure (1 dry qt or larger)
Berries and Cherry/Grape Tomatoes	X			X	
Citrus Fruits (oranges, grapefruits, lemons, etc.)	X	X			X
Edible Bulbs (onions [spring or green], garlic, leeks, etc.)	X	X	X		X
Edible Tubers (Irish potatoes, sweet potatoes, ginger, horseradish, etc.)	X				X
Flower Vegetables (broccoli, cauliflower, brussel sprouts, etc.)	X		X		
Gourd Vegetables (cucumbers, squash, melons, etc.)	X	X			X
Leaf Vegetables (lettuce, cabbage, celery, etc.)	X		X		
Leaf Vegetables (parsley, herbs, loose greens)	X		X	X	
Pitted Fruits (peaches, plums, prunes, etc.)	X	X			X
Pome Fruits (apples, pears, mangoes, etc.)	X	X			X
Root Vegetables (turnips, carrots, radishes, etc.)	X		X		

### 2.3.3. Cardboard Cartons.

(L&R, 1974, p. 223)

#### Guidelines and Interpretations

Cardboard cartons should be sold by their dimensions. Identification numbers used in the trade do not correspond to these dimensions and could tend to mislead the uninformed purchaser (although there is no actual unit such as inches associated with the identification numbers). Sales or catalogue literature will have to be investigated to determine whether there is sufficient information upon which to make a purchasing decision.

#### Background

Copies of letters received by the New York Bureau of Weights and Measures regarding cardboard containers were forwarded to the Committee. These letters highlight the confusion that exists when these containers are sold to new businessmen by an identity number which is often mistaken for the size of the box. For example, a 30 x 4 identification number refers to a box whose actual size is 27 x 3 inches. It was suggested that a new section be added to the Method of Sale of Commodities Regulation so that these containers can be sold on a basis that will provide more accurate information.

An important argument in support of adding a new section is that small businessmen just getting started need as much assistance as can be provided in order to survive and grow.

An argument opposing this change is that a table, similar to Table 1. of Section 2.9. (Softwood Lumber) of the Uniform Method of Sale Regulation, could be printed showing the relationship between identity and size; this would not solve the problem.

It is the consensus of the Committee that these containers should be sold by actual size. The Committee does not believe, however, that every trade practice must be controlled through the Uniform Laws and Regulations. This is



particularly true where the item does not directly concern the retail consumer. The Committee, therefore, recommends that the appropriate trade associations be contacted and asked to correct this practice on a voluntary basis.

#### **2.3.4. Catalyst Beads.**

(L&R, 1981, p. 100)

##### **Guideline and Interpretation**

The proper method of sale of catalyst beads used in automobile exhaust systems is by volume. It is appropriate for the quantity declaration to be supplemented by part number or other description of the specific converter for which the package of catalyst beads is intended.

##### **Background**

A communication from the General Motors Corporation AC Spark Plug Division was forwarded to the Committee which proposes discontinuing the labeling of their catalyst beads by weight. When the catalyst becomes contaminated by leaded gasoline or prolonged use, the catalytic converter in the exhaust system of recent GM cars and trucks (running on unleaded gasoline) must be emptied of its catalyst beads and be refilled by volume with replacement catalyst beads in order to meet emission standards. The beads are used by volume (to fill a catalytic converter), are hygroscopic, and vary in core material density. Therefore, packages of beads meeting a net weight label require an additional one-third pound (on the average) over the packages labeled by volume, cost about \$7.50 more per package, and the additional weight of beads will be discarded in actual use.

#### **2.3.5. Incense.**

(L&R, 1978, p. 151)

##### **Interpretation**

Incense labeled by count is fully informative and sufficient.

##### **Background**

The State of Oregon raised the issue of proper quantity declarations for the sale of incense. The question is what, if any, information other than count, such as weight or volume or length, is necessary for an adequate description on packages of incense. The Committee is of the opinion that a statement of count as defined in Section 6.4.1(c) of the Uniform Packaging and Labeling Regulation is fully informative and is sufficient in this case.

#### **2.3.6. Sea Shells.**

(L&R, 1976, p. 223)

##### **Guideline**

Sea shells shall be sold by count and weight for packages of 50 sea shells or less and by volume and weight for packages containing more than 50 sea shells.

#### **2.3.7. Tire Tread Rubber Products.**

(L&R, 1976, p. 233)

##### **Guideline**

Tire tread rubber products shall be sold by net weight. The polyethylene film protective backing shall be part of the product and included in the net weight. The core is part of the tare and must be deducted from the gross weight to determine the net weight.

**2.3.8. Wiper Blades.**

(L&R, 1979, p. 182)

**Interpretation**

There is a trade custom of labeling automobile wiper blades by the length of the metal backing or vertebra, not the length of the blade. This is an acceptable method of sale and net contents declaration.

**Background**

The Committee received a request from a manufacturer of automobile wiper blades that had a problem with one state concerning the measurement of length as labeled on their packages. The state felt that the proper designation should be the length of the blade itself; the manufacturer said that traditionally the industry measured the length of the metal backing or vertebra.

The Committee, after some discussion, determined that since there was no intent to mislead customers, the traditional measurement of the metal backing or vertebra was acceptable.

**2.3.9. Fireplace Logs.**

(L&R, 1975, p. 174)

**Interpretation**

Time of burning is not an appropriate quantity declaration for fireplace logs. (Section 2.4.3. of the Uniform Method of Sale of Commodities requires single logs to be sold by weight, or if packaged and less than 4 ft<sup>3</sup>, weight plus count.)

**Background**

The enforceability of quantity declarations using time as the basis of measurement for commodities, including packaged commodities, must be considered carefully if equity in the marketplace is to be achieved. The Committee wants to stress to those who have submitted time declaration questions that the enforceability factor should not override consumer protection and uniformity considerations. Based on the above criteria, the Committee recommends that the Conference take the position that time is not an appropriate quantity declaration for fireplace logs.

**2.3.11. Packaged Foods or Cosmetics Sold from Vending Machines.**

(L&R, 1982, p. 152)

**Interpretation**

Packaged foods and cosmetics sold from vending machines must be labeled the same as similar items not sold in vending machines, including identity, responsibility, net contents, and ingredient declaration, except that Section 3.3. of the Uniform Regulation for the Method of Sale of Commodities permits identity and net contents to be posted on the machine in lieu of appearing on the package.

**Background**

As part of its review of the Uniform Regulation for the Method of Sale of Commodities, the FDA recommended adding a statement to Section 3.3. that packaged foods and cosmetics sold in vending machines must in general be labeled in accordance with requirements for similar articles not sold in vending machines (e.g., ingredient declaration requirements). The Committee recommends that this information be made a guideline rather than incorporated as part of the uniform regulation.

**2.3.12. Movie Films, Tapes, Cassettes.**

(L&R, 1975, p. 174)

**Guideline**

Movie film may be sold by linear measure. Magnetic tapes and cassettes may be sold by either linear measure or playing time.

**Background**

The enforceability of quantity declarations using time as the basis of measurement for commodities, including packaged commodities, must be carefully considered to achieve equity in the marketplace. The Committee wants to stress to those who have submitted time declaration questions that the enforceability factor should not override consumer protection and uniformity considerations. The committee further recommends that the states follow FTC guidelines in requiring lineal measure for the sale of movie films and permit either linear measure or playing time for magnetic tapes and cassettes.

**2.3.13. Vegetable Oil.**

(L&R, 1983, p. 208)

**Guideline and Interpretation**

Packaged liquid vegetable oil must be labeled by liquid volume, although net weight may also be declared.

**Background**

Packages of liquid vegetable oil are being sold for restaurant and other small food business use labeled by weight. It has been brought to the attention of the Committee that containers of product labeled “5 gal” look identical in dimensions to those labeled “35 lb” but the density of the vegetable oil is such that the 35 lb cans contain only about 4½ gal. The Institute of Shortening and Edible Oils indicated that companies selling liquid vegetable oils often compete with those selling solid shortening, and that a net weight comparison is useful for these purposes. Recipes for food products in large sizes sometimes provide ingredient quantities by weight or volume.

It is the opinion of the members of the Committee that packaged liquid vegetable oil must be labeled by liquid volume although a net weight may be declared in addition to the net volume statement.

When a single manufacturer of vegetable oil packages the same oil in the same size container with two such widely different net quantity statements, this practice could easily be considered (a) misleading to the customer, and (b) nonfunctional slack fill. Weights and measures enforcement action should be taken.

**2.3.15. Bulk Sales.**

(L&R Committee, 1986, p. 140)

When packaged or wrapped items (such as individually wrapped candies) are sold from bulk displays by weight, the price must be based on the net weight, not the weight including the individual piece wrappings. This will require (1) subtracting the weight of the bag into which the customer puts the pieces plus (2) subtracting the weight of the piece wrappings (the latter is a percentage of the gross weight – that is, the tare increases as the customer selects more of the commodity).

**Background**

Retail food stores are merchandising prepackaged commodities such as candies, pet food, snack bars, and bouillon cubes from bulk displays. Some retailers sell these products by gross weight. Section 1.2. of the Uniform Weights and Measures Law reads in part: “The term ‘weight’ as used in connection with any commodity means net weight. . .”

A workshop was held on June 20, 1986, at the U.S. Department of Commerce, Washington, D.C., to explore the issues and alternatives involved in the sale of prepackaged goods from the bulk food sales areas of supermarkets. Representatives of the packaging, supermarket, and small grocery industries, scale and point-of-sale (POS) systems manufacturers, the U.S. Food and Drug Administration, weights and measures agencies, and the National Institute of Standards and Technology attended. No final recommendations came from this meeting; however, the participants expressed an interest in meeting again after a written report of the June 20, 1986, meeting was made available and before the Interim Meetings of the NCWM in January 1987. The following issues were discussed:

1. Prepackaged commodities in bulk displays are being sold on a gross weight basis.

Federal regulations covering packaged goods and every state Weights and Measures Law require any sale by weight to be “net weight” (not including the weight of the wrapping materials). In some areas of the nation, many items are being sold on a gross weight basis in the supermarkets, for example, fresh fruit and vegetables in poly bags in the produce area. Perhaps because of the light weight of these bags (that is, the minimum size of the scale division on the ordinary supermarket checkout scale is large with respect to the weight of the poly bags), low priority is given to correcting this sales practice, and a lack of uniformity in enforcement of the net weight requirements results. Weights and measures officials have found tare amounting to over 40 % of the gross weight in prepackaged items sold from bulk; the majority of cases seems to range from 3 % to 12 %. Officials see the need to “draw the line” in a sales practice that appears to have evolved from other practices that were not heavily monitored and corrected at their inception.

2. Retailers face technical and administrative problems in properly deducting tare from the gross weight.

Automatic deduction of tare is preferable for large-scale retailers because of its speed. No equipment (either stand-alone scale or POS) is available at the present time that can: (1) subtract a percentage of the gross weight to represent the tare weight; or (2) subtract a fixed tare for the bag and a percentage tare for the wrapper on the prepackaged item. [Editor’s Note: There is equipment now available that can deduct a tare that is a percentage of the gross weight.] Two POS system manufacturers said that new systems with percentage tare capability could be designed, but they could not definitely say whether retrofitting existing systems was possible. They said that the ability to retrofit declined with the age of the system. Supermarket representatives expressed concern that their in-store computer software would need modification above and beyond the retrofitting or software redesign that might be done by the POS manufacturers; their software is designed around current POS software.

Deduction of tare in the bulk food area using a scale other than the checkout scale can be done more easily than at checkout if a POS system is being used. A tare look-up table used in conjunction with the scale appears to be the only currently used method that meets the net weight requirements when packaged products are sold from bulk. (The procedure is to gross weigh the product, look up the tare, subtract it from the gross weight, and then determine a final net weight and total price.)

Each retailer will have to consider the cost of additional manpower (as the weighing and marking of the purchase in the bulk food area might require), new equipment (purchasing scales or POS systems with percentage tare capability), or retrofit of existing equipment as compared with the value of the market share contributed by the bulk marketing of prepacked commodities. However, two supermarket chain representatives said that they expected some growth in this type of sale (because of the customers’ perception of cleanliness of the product, for example).

3. Present methods of sale and advertising are often misleading.

Suggestions were made that advertising on a “wrapped weight” basis would properly inform the consumer. However, it was pointed out that a typical purchaser does not know what “wrapped weight” is (i.e., gross weight). Moreover, selling packaged goods on a gross weight basis is illegal; it thwarts value comparison with other products sold by net weight.

Bulk food sales advertising often includes claims of savings of, for example, 10 % to 20 % over a purchase of the same commodity in standard-pack form. These advertising claims can be exaggerated and misleading if the comparisons referenced are between standard-pack commodities sold net weight and products sold from bulk on a gross weight basis.

The possibility of advertising a net weight unit price, but actually weighing at the checkout on a gross weight basis (and charging at a lower gross weight unit price) was discussed. For example, a sign could be posted with the following:

“\$1.50 per pound, net weight. We are not able to weigh this packaged product on a net weight basis (that is, without the wrapper), and will therefore charge you \$1.40 per pound including the wrapper weight at the checkout.”

Everyone agreed that advertising claims and appropriate wording would have to be chosen carefully if this is to be viable. However, those weights and measures officials present were generally opposed to this alternative based on the difficulty of enforcement and lack of assurance that a consumer would really understand explanatory signage.

### **2.5.6. Guidelines for NCWM Resolution of Requests for Recognition of Moisture Loss in Other Packaged Products.**

(Exec, 1988, p. 94)

The Task Force on Commodity Requirements limited its work to only a few product categories, using these categories as models for addressing moisture loss. The gray-area concept is the result of this work.

Recognizing several candidates for future work in moisture loss, the Task Force recommends that the following guidelines for moisture loss be followed as far as possible by any industry requesting consideration:

1. There should be reasonable uniformity in the moisture content of the product category. For example, since pet food has final moisture contents ranging from very moist to very dry, some sub categorization of pet food needs to be defined by industry before the NCWM study of the issue.
2. The predominant type of moisture loss (whether into the atmosphere or into the packaging materials) must be specified.
3. Different types of packaging might make it necessary to subcategorize the product. For example, pasta is packaged in cardboard, in polyethylene, or other packaging more impervious to moisture loss. The industry should define the domain of packaging materials to be considered.
4. “Real-world” data is needed on the product as found in the retail marketing chain – not just laboratory moisture-loss data.
5. The industry requesting consideration of moisture loss for its product should collect data on an industry-wide basis (rather than from only one or two companies).

Information concerning the relative fractions of imported and domestically produced product should be available, for example, in order to assess the feasibility of interacting with the manufacturer on specific problem lots.

6. Moisture loss may occur either:
  - during manufacturing; or
  - during distribution.

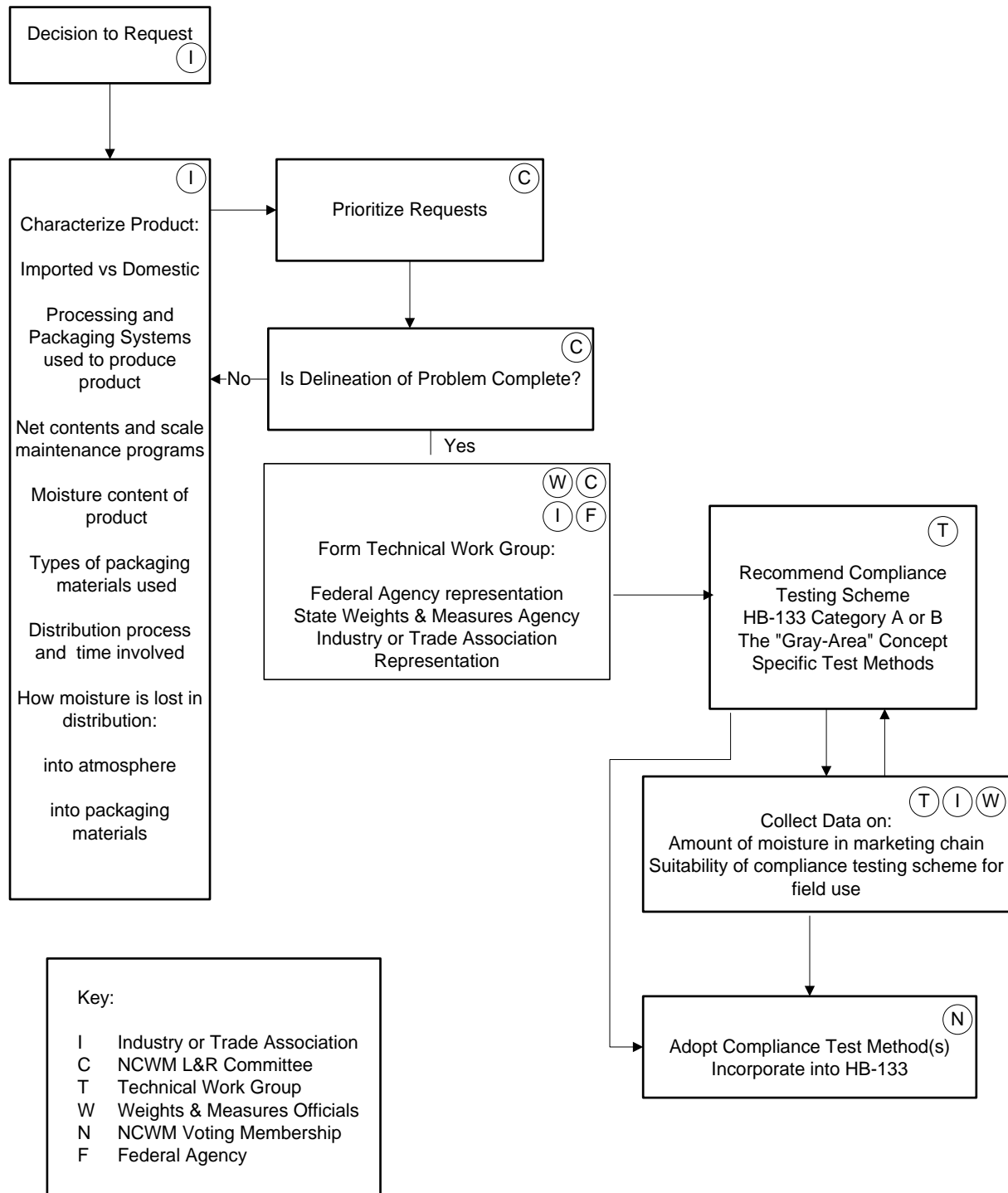
Data will be needed to show the relative proportion of moisture loss in these different locations since moisture loss is permitted only under good distribution practices. Geographical and seasonal variations may apply.

7. A description of the processing and packaging methods in use in the industry will be of great value, as will a description of the distribution system and time for manufacturing and distribution. A description of the existing net quantity control programs in place should be given, together with information on how compliance with Handbook 133 is obtained. A description of maintenance and inspection procedures for the scales should be provided, together with information on suitability of equipment and other measurements under Handbook 44.
8. A description of federal and local agency jurisdiction and test should be given, as well as any regulatory history with respect to moisture loss and short weight. Has weights and measures enforcement generated the request? What efforts have addressed the moisture loss issue prior to approaching the NCWM? Are the appropriate federal agencies aware of the industry's request to the NCWM?
9. The industry should propose the type of compliance system and/or moisture determination methodology to be used. The compliance scheme, if it contains industry data components, should be susceptible to verification (examples: USDA net weight tests for meat; exchange of samples with millers for flour) and should state what the companies will do to provide data to field inspection agencies in an ongoing fashion (as the gray-area approach requires). If in-plant testing is to be combined with field testing, who is to do such testing, and how is this to be accomplished? It should be possible to incorporate the proposed testing scheme into Handbook 133 to be used with Category A or B sampling plans.

When all the preliminary information recommended above has been collected, a field test of the proposed compliance scheme should be conducted by weights and measures enforcement officials to prove its viability.

See the plan diagrammed on the next page.

### Plan For NCWM Resolution of Individual Requests For Recognition of Moisture Loss



**2.6.1. Retail Gas Sales and Metric Price Computations in General.**

(S&amp;T, 1980, p. 227)

**Guideline**

The National Institute of Standards and Technology published equivalent rounded values for metric equivalents of inch-pound units should be used. They are:

3.785 411 784 liters = 1 gallon

0.264 172 052 4 gallon = 1 liter

A “Rule of Reason” should apply to the corrected value so that the value used is consistent with the quantity of the transaction. The converted value should never have fewer than four significant digits and should have at least the same number of significant digits as the number of significant digits in the quantity of product being converted. For example, if a 1000 gal delivery were to be converted to liters the value would be 3785 L; for 10 000 gal, 37 854 L; for 100 gal, 378.5 L.

In the case of expressing a unit price equivalent for consumer value comparisons in retail gasoline sales, the following formula should be used: (advertised, posted, or computing device unit price per liter) x 3.785 = (equivalent unit price per gallon, rounded to the nearest  $\frac{1}{10}$  cent.)

**Examples:**

26.9 cents per liter x 3.785 = \$1.018 per gallon

26.8 cents per liter x 3.785 = \$1.014 per gallon

26.7 cents per liter x 3.785 = \$1.011 per gallon

26.5 cents per liter x 3.785 = \$1.003 per gallon

26.4 cents per liter x 3.785 = \$0.999 per gallon

This method is preferable to the alternative method of dividing the price per gallon by 3.785, which results in the same price per liter for three or more different prices per gallon when rounded to the  $\frac{1}{10}$  cent.

**2.6.2. Price Posting.**

(L&amp;R, 1981, p. 101)

**Guideline**

## 1. Street Signs.

- a. Until such time as the sale of gasoline and other Engine fuels is predominately by metric measurement (liter), price per gallon information should be made readily available to all prospective customers.
- b. All street, roadside, and similar advertising signs displaying product price should provide price per gallon information.
- c. Signs showing the equivalent price per liter may also be used, but their use is optional and should not employ numerals larger than the equivalent gallon price display.
- d. Signs should show complete dollar and cents numerals, and they should be clearly legible and of full size. An exception should be granted to street signs that were designed to display only three numerals (e.g., \$.899) and not four numerals as required for prices over \$1.00 per gallon (e.g., \$1.259). Until such signs can be replaced or modified, it would be acceptable:
  - (1) to attach an appropriate sign extension with the decimal fraction of a cent representation in alignment with the posted price;



- (2) to include a smaller fraction of a cent representation with the last numeral of the posted price; or
  - (3) to add the whole number “one” before the cents values.
- e. The changeover to advertising prices by the liter as a single mode of pricing should be established when 75 % of all retail outlets in a jurisdiction have converted their dispensers to metric measurement.

## 2. Posting of Prices at the Dispenser.

Each retail outlet should use exclusively only one measurement method of sale (gallon or liter). A change from one method to another should be carried out for all devices dispensing motor fuels in the retail outlet.

*In the case of liter sales, suitable posting of per gallon and per liter prices at the device, service island, premises of the retail outlet, or any other locations must be in accordance with state and local laws, regulations, and ordinances, and in a manner that facilitates consumer comparisons between the per gallon price and the per liter price. Additional requirements may be necessary to avoid uncertainty as to nomenclature, location, and size of information on signs.*

It is recommended that:

- a. Current and accurate price comparisons between gallon and liter values be posted at the dispenser within easy view of the customer and visible from either side of the island.
- b. The sign should show equivalent quantity and price information.

**Examples:**

27.1¢ per liter = \$1.026 per gallon

3.785 liters = 1 gallon

- c. Letters and numerals should be at least  $\frac{3}{4}$  in (19 mm) in height and  $\frac{1}{8}$  in (3 mm) in width of stroke.

## 3. Quantity and Price Display on Dispensers

It is required that dispensers be designed to clearly show all required quantity and price information on the face(s) of a motor fuel dispenser in accordance with Handbook 44.

## 4. Dispenser Modification Kits

As an interim alternative to “half pricing,” a number of computer modification kits have been installed to modify existing retail motor fuel dispensers that were not designed to compute and indicate prices over 99.9¢ per gallon.

*Some of the modification kits that have been referred to state weights and measures officials for approval have been rejected as failing to conform to Handbook 44 requirements. It is recommended that all modification kits and future modifications of dispensers be so designed and made as to be in full compliance with all applicable requirements of Handbook 44.*

**2.6.3. Octane Posting Regulations.**

(Liaison, 1979, p. 240)

**Guideline**

Weights and Measures officials should report to the FTC any instances of failure to post octane ratings by service stations. These would most likely occur during routine inspections of service station gasoline dispensers. Reports should be made to the appropriate FTC regional offices as listed below.

**Background**

As of June 1, 1979, the FTC requires the determination of octane ratings by refiners, the certification of octane ratings by refiners and distributors, and the posting of octane ratings by retailers on all gasoline pumps. The requirements are set forth in Public Law 95 297, the Petroleum Marketing Practices Act (PMPA), passed in June 1978 and the FTC’s Octane Rule, 16.C.F.R. Part 306. Although the octane posting rule has no effect on most FTC programs administered by state weights and measures officials with respect to checking gasoline dispensing devices for accuracy, the Liaison Committee feels that the Conference should be generally informed about the law and the FTC rule, if only to be prepared to answer inquiries about it or for some possible future enforcement demands. Keeping apprised of developments associated with the rule may be advisable. In addition, it will affect states which have octane certification and posting programs.

**Regional Offices, Addresses, and Telephone Numbers:**

<p><b>Northeast Region</b> (CT, ME, MA, NH, NJ, NY, PR, RI, VT, and U.S. Virgin Islands)</p> <p>Federal Trade Commission One Bowling Green New York, NY 10004 (877) 382-4357</p>	<p><b>East Central Region</b> (DE, DC, MD, MI, OH, PA, VA, and WV)</p> <p>Federal Trade Commission 1111 Superior Avenue Suite 200 Cleveland, OH 44114-2507 (877) 382-4357</p>	<p><b>Southeast Region</b> (AL, FL, GA, MS, NC, SC, and TN)</p> <p>Federal Trade Commission Suite 1500 225 Peachtree Street, NE Atlanta, GA 30303 (877) 382-4357</p>
<p><b>Midwest Region</b> (IL, IN, IA, KS, KY, NE, ND, MN, MO, SD, and WI)</p> <p>Federal Trade Commission 55 West Monroe Street Suite 1825 Chicago, IL 60603 (877) 382-4357</p>	<p><b>Northwest Region</b> (AK, ID, MT, OR, WA, WY)</p> <p>Federal Trade Commission 915 Second Avenue, Room 2896 Seattle, WA 98174 (877) 382-4357</p>	<p><b>Southwest Region</b> (AR, LA, NM, OK, and TX)</p> <p>Federal Trade Commission 1999 Bryan Street Suite 2150 Dallas, TX 75201-6808 (877) 382-4357</p>
<p><b>Western Region</b> (AZ, Northern CA, Southern CA, CO, HI, NV, and UT)</p> <p>Federal Trade Commission 901 Market Street Suite 570 San Francisco, CA 94103 (877) 382-4357</p>	<p><b>Western Region</b> (AZ, Northern CA, Southern CA, CO, HI, NV, and UT)</p> <p>Federal Trade Commission 10877 Wilshire Boulevard Suite 700 Los Angeles, CA 90024 (877) 382-4357</p>	

The preemption section of PMPA (204) reads as follows:

Section 204. To the extent that any provision of this title applies to any act or omission, no state or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this title.

Section 204 prohibits states and other political subdivisions from enforcing requirements that are not the same as the applicable provisions of this law. Jurisdictions having octane requirements should carefully review with their legal advisors the effect of this law.

The FTC's Octane rule was published in final form on March 30, 1979, in the Federal Register (Vol. 44, No. 63, Part V, pp. 19160-19172). The rule became effective June 1, 1979.

The law requires that refiners determine octane ratings of their products, and certify them to their distributors. The distributors must pass along the certification to the retailer, unless he blends the gas, in which case he may have to certify his blend.

A similar procedure relating to the posting of octane ratings is set forth for the retailer. The FTC is responsible for enforcement with respect to the accuracy of the certified ratings. The FTC is also empowered to check records, which must be retained for one year by each link in the distribution chain.

The FTC is in need of help from the state and local jurisdictions in the area of surveillance and testing. Such assistance could occur at a number of levels. Notice of octane mislabeling and failure to post octane ratings is requested.

Other levels of assistance would concern jurisdictions that have octane testing programs and would be interested in cooperating with FTC in testing or in reporting discrepancies in octane rating.

For more information contact the Federal Trade Commission at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, phone (202) 326-2222.

#### **2.6.4. Multi-Tier Pricing: Motor Fuel Deliveries (Computing Pumps or Dispensers).**

(L&R, 1982, p. 150; L&R, 1985, p. 100) (L&R, 1988, p. 162)

##### **Policy**

Charging different prices for the same product depending upon the manner of payment, other purchases, amount of service, etc., is a management decision of the merchandiser. Those merchants who elect to offer multiple prices for motor fuel must comply with the state and local weights and measure laws and regulations, including Handbook 44. They must also make marketing decisions that comply with state truth in lending, cash discount, price advertising, and usury laws. All such laws are intended to prohibit deceptive, misleading, or misrepresentative information being given to the consumer. The following guidelines are intended to apply to price advertising or posting at the street side or highway as well as at the pump or dispenser, and to the price computed at the device. These guidelines are applicable to other discount or combination offers (such as combination purchases of car wash and gas, for example).

1. If a price is posted or advertised, it must be available to all qualified customers. If any condition or qualification is required to obtain the posted price, that condition must also be posted clearly and understandably, in conjunction with the price wherever it is posted.
2. The lowest price may be posted or advertised by itself as long as any restrictions for receiving that price (for example, "cash only") are also clearly posted or advertised in conjunction with the price and as long as other state requirements do not prohibit it. For example, certain states require that all prices available from a given retail location must be posted on street side signs if any prices are posted.

3. If the merchandiser elects to establish separate devices or islands for sale of the same product at different prices, the devices or islands shall be clearly identified as “cash,” “credit,” “self-serve,” or other appropriate wording to avoid customer confusion.
4. The use of a single-price-computing dispenser for sale of motor fuel at multiple unit prices is inappropriate, facilitates fraud, and should be eliminated. The NCWM should adopt a plan and timetable for changeover to devices that can compute and display final money values for multiple prices.

### **2.6.5. Cereal Grains and Oil Seeds.**

(L&R, 1981, p. 95; L&R, 1996, p. 135)

#### **Interpretation**

The addition of water to grain for the purpose of adding weight prior to selling grain by weight is an illegal practice under federal laws.

*NOTE: Effective February 11, 1995, the Federal Grain Inspection Service adopted a regulation in 7 CFR Part 800.61 prohibiting the application of water to grain except for milling, malting, or similar processing operations. See Volume 59, No. 198 for Friday, October 14, 1994, or page 52 071, for additional information.*

#### **Background**

A letter from the Oklahoma Grain and Feed Association was forwarded to the Committee asking whether the addition of water to grain is legal. The request was prompted by an article reporting on methods of adding water to grain to bring the moisture content up to market standards. For example, when soybeans are sold at 8 % moisture content, there is less weight sold (and less revenue for the soybeans to the seller) than if water were added to the same soybeans to bring them to 10 % moisture content.

However, the Committee is greatly concerned about the ramifications of such practices. Many grain experts do not believe that over-dried grain should be valued as highly as grain at moisture contents close to market standards. Overly dry grain is more susceptible to breakage, for example.

Water added after harvest will not be taken up chemically the way that naturally moist grain binds water. Errors in adding water or the particular biochemical nature of the grain after addition of water can lead to spoiled grain. Studies on the long term keeping qualities of grain with water added have not been carried out. The calibration of moisture meters is based on naturally moist grain, and there is a known difference between the electrical properties of naturally moist grain and grain with moisture added.

Of a more basic nature, however, the Committee recognizes the fact that a grain buyer purchases grain expecting such grain to be naturally moist or dried, not to be with water added. The seller who adds water to grain solely to add weight, therefore, misrepresents his product.

Both the FDA and USDA have sent letters to the Committee indicating that the addition of water to grain solely for the purpose of adding weight is an illegal practice. Because existing federal laws already prohibit this practice, the Committee recommends no further action on the part of the Conference at this time.

### **2.6.6. Basic Engine Fuels, Petroleum Products, and Lubricants Laboratory.**

(L&R, 1994, p. 129-135; L&R, 2006, p. L&R-8) (Developed by the Petroleum Subcommittee.)

The petroleum fuels and lubricants laboratory is an integral element of an inspection program and is generally developed to satisfy the testing requirements as described in the laws and rules of the regulating agency. Guidelines have been developed to assist states in evaluating their options of employing a private lab or building or expanding their own lab. This information is available at [www.nist.gov/pml/wmd/index.cfm](http://www.nist.gov/pml/wmd/index.cfm).

**2.6.7. Product Conformance Statements.**

(L&amp;R, 1992, p. 148)

**Interpretation**

References to a product's conformance with product standards (for example, "manufactured to standard EN235" or similar product conformance statements) on labels for wallcovering or other products, are not considered qualifying terms and do not violate Section 6.12.1., Supplementary Quantity Declarations of the Uniform Packaging and Labeling Regulation, provided the requirements of Section 8.1.4. Free Area is met.

**Background**

The Wallcovering Manufacturers Association (WMA) requested the Conference's position on the use of conformance statements on the labels of wallcovering and border material. This issue relates to wallcovering products that originate from manufacturers in Europe where a declaration of conformance to a specific government standard is required on consumer packages. Thousands of product "standards" or "Euronorms" are being established for the European Community. Conformance declarations are required to provide consumers and customs officials with information on the product. The issue relates to the use of such statements as "manufactured to standard EN235" on labels of wallcovering that are imported from Europe. The WMA requested the Committee's opinion on the use of this type of statement if a package is labeled in conformance with sections Section 6.12.1. Supplementary Quantity Declarations and Section 8.1.4. Free Area. One question is whether the display of the conformance statement would be permitted provided that it did not include an unacceptable quantity declaration. Another question concerns the need to comply with the requirement for adequate free area around the quantity declaration when the conformance declaration is placed on the label. It was the Committee's opinion that conformance statements on package labels would not violate any provisions of the PLR if the requirements of Sections 6.12.1. and 8.1.4. are met.

The Committee recommended this interpretation for inclusion in Handbook 130 because it is likely that this type of notice will become common as more and more free market trading areas are opened to expand international trade. This interpretation does not indicate acceptance or endorsement of any requirements contained in product conformance statements.

**2.6.8. Commodities Under FTC Jurisdiction under the Fair Packaging and Labeling Act and Exclusions.**

(L&amp;R, 1993, p. 279; L&amp;R, 1994, p. 294)

The following lists indicate the commodities and commodity groups that are and are not within the scope of the Fair Packaging and Labeling Act administered by the FTC. The following codes appear with each excluded commodity and designate the reason that the particular commodity has been excluded.

BATF – designates commodities subject to laws administered by the Bureau of Alcohol, Tobacco, and Firearms.

CI (Commission Interpretation) – designates those categories that have been excluded by the Commission in the light of legislative history of the definition of "consumer commodity." By applying this definition to individual commodities, the Commission has more narrowly applied the latter term and set forth a list of items that do not meet the criteria of consumer commodities. On occasion the Commission is requested in both a formal and informal manner to consider individual products and to determine their status relative to the definition of "consumer commodity" as it is used in the Act.

EPA – designates commodities subject to the Federal Environmental Pest Control Act of 1972 administered by the Environmental Protection Agency.

FDA – designates those commodities which are subject to regulation by the FDA either under the portion of the FPLA administered by that agency or the Federal Food, Drug, and Cosmetic Act (Section 10(a)(3) and Section 7 of the FPLA). Following the code FDA will be a letter further designating the commodity as either a food (F), drug (D), cosmetic (C), or device (DV).

USDA – designates those commodities excluded from jurisdiction by Section 10(a) of the FPLA and represents a commodity within one of the following categories: meat or meat products, poultry or poultry products, or tobacco or tobacco products.

It may be of some help in ascertaining whether a particular product is or is not included within the FPLA definition of “consumer commodity” and thus subject to FTC jurisdiction under that Act, to refer to the following definition:

“. . . Any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which is usually consumed or expended in the course of such use.”

By applying these criteria to the particular product in question and then reviewing the list of excluded commodities, the observer will be able, in most instances, to determine the status of the item. In the event, however, that the observer is unable to ascertain whether a particular commodity is covered or excluded from FTC jurisdiction, contact FTC for an opinion.

<b>Commodities Included Under FTC Jurisdiction</b>	
Soaps and Detergents	Powder, flakes, chips, etc. Liquid Paste, cake, or tablet
Cleaning Compounds	Liquid Powder Paste or cake Solvent and cleaning fluids for home use
Laundry Supplies	Conditioners and softeners, ironing aids, distilled water Sizings and starches Bluings and bleaches Pre-soaks, enzymes, etc.
Cleaning Devices	Sponges and chamois Steel wool, scouring and soap pads
Food Wraps	Plastic and cellophane Wax paper and paper Foil (aluminum wrap)
Paper Products	Toweling Napkins, table cloths, and place mats Facial tissues Bathroom tissues Disposable diapers Crepe paper Other (e.g., shelf paper, wrapping paper, eye glass tissues)

<b>Commodities Included Under FTC Jurisdiction</b>	
Waxes and Polishes	Powder Liquid Paste and cake Other (e.g., polish impregnated cloths, scratch removers)
Household Supplies	Matches Candles Toothpicks Cordage (string, twine, rope, clothes line, etc.) Drinking straws Lighter and propane torch fuel, flints, pipe cleaners, etc. Lubricants
Household Supplies (continued)	Picnic supplies Sand paper and emory paper Charcoal briquets, chips, logs, etc. Dyes and tints Camera film, photo supplies and chemicals Protective foil cooking utensils Aluminum foil cooking utensils Christmas decorations Solder LPG for other than home heating or cooking Waxes for home use Light bulbs Dry cell batteries Pressure sensitive tapes, excluding gift tapes
Containers	Paper (plain, waxed, or plastic coated) Foil Plastic or Styrofoam
Air Fresheners and Deodorizers	Potpourri
Adhesives and Sealants	
Cordage	

<b>Commodities Excluded from FTC Jurisdiction</b>		
<b>Term</b>	<b>Description</b>	<b>FTC Jurisdiction</b>
Adhesive Tape		FDA-D
Alcoholic Beverages		BATF
Aluminum Clothesline	Plastic clothesline with a steel core	CI
Antifreeze		CI
Artificial Flowers and Parts		CI
Automotive Accessories	Floor mats, seat covers, spare parts, etc.	CI
Automotive Chemical Products	Auto polish, wax, and finish conditioner, rubbing compound, tire paint, chrome polish, gasoline additives, etc.	CI
Bath Oil and Bubble Bath		FDA-C
Bicycle Tires and Tubes		CI
Books		CI
Bottled Gas	Cooking or heating	CI
Brushes	Bristle, nylon, etc., including hair-brushes, toothbrushes, hand and nail brushes, paint brushes, etc.	CI
Brooms and Mops	Glass, floor, and dish mops, etc.	CI
“Bug Proof” Shelf Paper		EPA
Candle Holders	Without candles	CI
Cameras		CI
Chinaware		CI
Christmas Light Sets	Replacement or other bulbs sold separately are not excluded	CI
Cigarette Lighters		CI
Clothespins		CI
Clothing and Wearing Apparel	Socks, gloves, shoelaces, underwear, etc.	CI
Compacts and Mirrors		CI
Cosmetics	Defined by Section 201(i) of the Food, Drug, and Cosmetic Act as “(1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap.”	FDA-C
Cotton Puffs	Sterilized	FDA-D
Crystalware		CI
Detergent Bar with Any Drug or Cosmetic Claim	If the observer experiences difficulty in ascertaining whether or not a given product is a soap or a detergent, contact the manufacturer or FDA.	FDA-D or C
Decorative Magnets		CI
Devices	Defined by Section 201(h) of the Food, Drug, and Cosmetic Act as	FDA-DV



<b>Commodities Excluded from FTC Jurisdiction</b>		
<b>Term</b>	<b>Description</b>	<b>FTC Jurisdiction</b>
	“instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.” This category includes trusses, syringes, arch supports, etc.	
Diaries and Calendars		CI
Disinfectants		EPA
Drugs	Defined by Section 201(g) (1) of the Food, Drug, and Cosmetic Act as “(a) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia, or official National Formulary, or any supplement to any of them; and (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (c) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (d) articles intended for use as a component of any articles specified in clause (a), (b) or (c); but does not include devices or their components, parts, or accessories.”	FDA-D
Durable Articles or Commodities		CI
EPA Covered Products	Products subject to regulation under the Federal Environmental Pesticide Control Act that is administered by the Environmental Protection Agency.	EPA
Fingernail Files		CI
Flowers, Flower Seeds, Fertilizer, and Fertilizer Materials, Plants or Shrubs, Garden and Lawn Supplies		CI
Food	Defined by Section 201(f) of the Food, Drug, and Cosmetic Act as “(1) articles used for food and drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.”	FDA-F
Fountain Pens, Mechanical Pencils, and Kindred Products	Ball point pens, lead pencils, and lead refills, etc.	CI
Garden Tools	Hoses, trowels, grass clippers, etc.	CI
Germ Killing or Germ Proofing Products		EPA
Gift Tape and Ties	Ribbon, tape, etc.	CI
Gift Wrapping Material	Decorative wrapping foil, paper, cellophane, etc.	CI
Glasses and Glassware	Disposable plastic glasses are not excluded	CI
Gloves (of Any Type)		CI
Greeting Cards		CI
Hair Combs, Nets, and		FDA-DV

<b>Commodities Excluded from FTC Jurisdiction</b>		
<b>Term</b>	<b>Description</b>	<b>FTC Jurisdiction</b>
Pins		
Hand Tools		CI
Handicraft and Sewing Thread	Yarn, etc.	CI
Hardware	Extension cords, thumb-tacks, hose clamps, nails, screws, picture hangers, etc.	CI
Household Appliances, Equipment, or Furnishings, Including Feather and Down-Filled Products, Synthetic-Filled Bed Pillows, Mattress Pads and Patchwork Quilts, Comforters, and Decorative Curtains		CI
Ink		CI
Insecticides	Insect repellents in any form, mothballs, etc.	EPA
Ironing Board Covers		CI
Jewelry		CI
Lambs Wool Dusters		CI
Luggage		CI
Magnetic Recording Tape	Reels, cassettes, and cartridges.	CI
Meat and Meat Products		USDA
Metal Pails		CI
Motor Oil	Including additives. Household multi-purpose oil is not excluded.	CI
Mouse and Rat Traps		CI
Mouthwash		FDA-D
Musical Instruments		CI
Paints and Kindred Products	Wallpaper, turpentine, putty, paint removers, caulking and glazing compounds, wood fillers, etc. Note, however, that bathroom caulking materials, patching plaster, spackling compound, and plastic wood are not excluded. In the event of uncertainty, contact FTC.	CI
Paintings and Wall Plaques		CI
Pet Care Supplies		CI
Pewterware		CI
Photo Albums		CI
Pictures		CI
Plastic Buckets and		CI

<b>Commodities Excluded from FTC Jurisdiction</b>		
<b>Term</b>	<b>Description</b>	<b>FTC Jurisdiction</b>
Garbage Cans		
Plastic Tablecloths, Plastic Place Mats		CI
Plastic Shelf Lining		CI
Pre-Moistened Towelettes		FDA-C
Polishing Cloths	Polishing cloths that are impregnated with polish or chemicals (silicone, etc.) are not excluded.	CI
Poultry and Poultry Products		USDA
Rubber Gloves		CI
Rubbing Alcohol		FDA-D
Safety Flares		CI
Safety Pins		CI
Sanitary Napkins		FDA-D or C
School Supplies	Rulers, crayons, paper, pencils, etc.	CI
Self-Stick Protective Felt Tabs		CI
Seeds of All Kinds		USDA
Sewing Accessories	Needles of any type, thimbles, kindred articles, etc.	CI
Shampoo		FDA-C or D
Shoelaces		CI
Small Arms Ammunition		CI
Silverware, Stainless Steelware, and Pewterware		CI
Smoking Pipes		CI
Soap Bars with a Drug Claim	Including any claim for removing facial blemishes, etc. Refer to Detergent Bars for further discussion in this area.	FDA-D
Soap Dishes		CI
Souvenirs		CI
Sporting Goods		CI
Stationery and Writing Supplies	Looseleaf binders, paper tablets, etc.	CI
Textiles and Items of Wearing Apparel	Cloth laundry bags, towels, cheese cloth, shoe shine cloths, etc.	CI
Tobacco and Tobacco Products	Pipes, cigarettes, etc.	BATF - USDA

<b>Commodities Excluded from FTC Jurisdiction</b>		
<b>Term</b>	<b>Description</b>	<b>FTC Jurisdiction</b>
Toothpaste		FDA-D
Toys		CI
Typewriter Ribbon		CI
Wire of Any Type		CI
Woodenware		CI

### **2.6.9. Size Descriptors for Raw, Shell-On Shrimp Products.**

(L&R, 1995, p. 97)

#### **Guideline**

If size descriptor terms for shrimp (e.g., small, medium, large, or colossal) are used on packages, advertisements, or on signs when offering shrimp for sale from bulk, a statement of count-per-kilogram, if sold by kilogram, or count-per-pound, if sold by pound, should be included adjacent to the size descriptor (e.g., medium-large, 31 to 40 shrimp per pound).

### **2.6.10. Model Guidelines for the Administrative Review Process.**

#### **Purpose**

These guidelines are provided to assist weights and measures programs in establishing an administrative review process. They are not intended to be the only process an agency may use nor are they intended to supersede any agency's existing process. Before implementing ANY process, it should be approved by legal counsel.

These guidelines ensure that persons affected by “inspection findings” (e.g., price misrepresentations or shortweight packages), or who are deprived of the use of their property (devices or packages placed under “stop” or “off-sale” order), are provided a timely-independent review of the action. The process enables affected persons to provide evidence which could be relevant in determining whether the enforcement action was proper. The purpose of the process is to ensure that a person’s ability to conduct business is not hindered by improper enforcement actions. This process is independent of any other action (e.g., administrative penalties, prosecutions, etc.) that may be taken by the enforcement agency.

#### **Background**

In the course of their work, weights and measures officials take enforcement actions that may prohibit the use of devices or the sale of packaged goods (e.g., “stop-sale” or “off-sale” orders for packages and “stop-use” or “condemnation” tags issued on devices). Improper actions (e.g., not following prescribed test procedures, enforcing labeling requirements on exempted packages, or incorrectly citing someone for a “violation”) place the official and the jurisdiction in the position of being liable for the action if it is found that the action was “illegal.” In some cases, weights and measures jurisdictions could be ordered to pay monetary damages to compensate the affected party for the improper action.

This process is one way to provide affected persons an opportunity to present evidence which may be relevant in determining whether the order or finding has been properly made to an independent party. The procedure enables business operators to obtain an independent review of orders or findings so that actions affecting their business can be evaluated administratively instead of through litigation. This ensures timely review, which is essential because of the impact that such actions may have on the ability of a business to operate and in cases where perishable products may be lost.

## Review Provisions

Parties affected by enforcement actions must be given the opportunity to appeal enforcement actions.

Inspectors are the primary contacts with regulated firms and thus are in the best position to ensure that the enforcement actions they take are “proper.” “Proper” means that inspections are conducted (1) within the scope of the authority granted by law, (2) according to recognized investigative or testing procedures and standards, and (3) that enforcement actions are lawful. The “burden” for proving that actions are “proper” falls on the weights and measures program, not on regulated firms.

Weights and measures officials are law enforcement officers. Therefore, they have the responsibility to exercise their authority within the “due process” provisions of the U.S. Constitution. As weights and measure programs carry-out their enforcement responsibilities in the future, more and more challenges to their actions and authority will occur. It is in the best interest of any program to establish strict operational procedures and standards of conduct to prevent the occurrence of improper actions which may place the jurisdiction in an untenable position in a court challenge of an enforcement action. The foundation for ensuring “proper” actions is training, clear and concise requirements, and adoption of, and adherence to uniform test procedures and legal procedures.

Prior to taking enforcement actions the inspector should recheck test results and determine that the information on which the action will be taken is accurate.

Inspections shall be conducted with the understanding that the findings will be clearly and plainly documented and reviewed with the store’s representative.

During the review of the findings, the firm’s representative may provide information which must be used by the inspector to resolve the problems and concerns before enforcement actions are taken. In some cases, the provided information may not persuade the inspector to forego the action. In some cases, the inspector and business representative may not understand the circumstances surrounding the violations, or there may be a conflict between the parties that they cannot resolve. In other cases, the owner or manufacturer may not learn that an enforcement action has occurred until long after the inspector leaves the establishment.

Steps:

1. Provide a framework that will help in resolving most of these situations where “due process” is of concern. Make sure that the responsible party (e.g., as declared on the package label) is notified of violations and receives copies of inspection reports. Establish standard operating procedures to assure the affected party of timely access to a representative of the weights and measures program so that the firm can provide the relevant information or obtain clarification of legal requirements.
2. Make the process as simple and convenient as possible. Especially in distant or rural areas where there are no local offices, the review should be conducted by a supervisor of the official taking the action if agreed to by the person filing the request for review.
3. The process should include notice that the firm can seek review at a higher level in the weights and measures program or an independent review by a third party. The following procedures are recommended:
  - (a) Any owner, distributor, packager, or retailer of a device ordered out of service, or item or commodity ordered “off-sale,” or inspection finding (e.g., a price misrepresentation or a shortweight lot of packages) shall be entitled to a timely review of such order, to a prompt, impartial, administrative review of such off-sale order or finding.

A notice of the right to administrative review should be included on all orders or reports of findings or violations and should be communicated to the responsible firm (e.g., person or firm identified on the product label):

Sample Notice

You have the right to Administrative Review of this order or finding. To obtain a review, contact the Director of Weights and Measures by telephone or send a written request (either postmarked, faxed, or hand delivered) to:

(Name, Address or Fax Number of the Director or other Designated Official)

Your request should reference any information that you believe supports the withdrawal or modification of the order or finding.

- (b) The administrative review shall be conducted by an independent party designated by the Director or before an independent hearing officer appointed by the Department. The officer shall not be a person responsible for weights and measures administration or enforcement.
- (c) No fees should be imposed for the administrative review process.
- (d) The firm responsible for the product or the retailer may introduce any record or other relevant evidence.

**For example:**

- i. Commodities subject to the off-sale action or other findings were produced, processed, packaged, priced, or labeled in accordance with applicable laws, regulations or requirements.
  - ii. Devices subject to the “stop-use” order or “condemnation” were maintained in accordance with applicable laws, regulations or requirements.
  - iii. Prescribed test procedures or sampling plans were not followed by the inspector.
  - iv. Mitigating circumstances existed which should be considered.
- (e) The reviewer must consider the inspector’s report, findings, and actions as well as any evidence introduced by the owner, distributor, packager, or retailer as part of the review process.
  - (f) The reviewer must provide a timely written recommendation following review unless additional time is agreed to by the department and the petitioner.
  - (g) The reviewer may recommend to the Department that an order be upheld, withdrawn or modified. If justified the reviewer may recommend other action including a reinspection of the device or commodity based upon information presented during the review.
  - (h) All actions should be documented and all parties advised in writing of the results of the review. The report of action should be detailed in that it provides the reasons for the decision.

**2.6.11. Good Quantity Control Practices.**

Good Quantity Control Practices means that the plant managers should take all reasonable precautions to ensure the following quantity control standards or their equivalent are met:

1. A formal quantity control function is in place with authority to review production processes and records, investigate possible errors, and approve, control, or reject lots.
2. Adequate facilities (e.g., equipment, standards and work areas) for conducting quantity control functions are provided and maintained.
3. A quantity control program (e.g., a system of statistical process control) is in place and maintained.
4. Sampling is conducted at a frequency appropriate to the product process to ensure that the data obtained is representative of the production lot.
5. Production records are maintained to provide a history of the filling and net content labeling of the product.
6. Each “production lot” contains on the average the labeled quantity and the number of packages exceeding the specified maximum allowable variation (MAV) value in the inspection sample shall be no more than permitted in Tables 2-1. Class of Scale and 2-2. Acceptance Tolerances for Class of Scale Based on Test Load Divisions in NIST Handbook 133.
7. Packaging practices are appropriate for specific products and measurement procedures (e.g., quantity sampling, density and tare determinations) and guidelines for recording and maintaining test results are documented.
8. Personnel responsible for quantity control follow written work instructions and are competent to perform their duties (e.g., background, education, experience and training). Training is conducted at sufficient intervals to ensure good practices.
9. Recognized procedures are used for the selection, maintenance, adjustment, and testing of filling equipment to insure proper fill control.
10. Weighing and measuring devices are suitable for their intended purpose, and measurement standards are suitable and traceable to national standards. This includes a system of equipment maintenance and calibration to include recordkeeping procedures.
11. Controls over automated data systems and software used in quantity control ensure that information is accessible, but changeable only by authorized personnel.
12. Tare materials are monitored for variation. Label changes are controlled to ensure net quantity matches labeled declaration.

#### **2.6.12. Point-of-Pack Inspection Guidelines.**

##### **A. Weights and Measures Officials’ Responsibilities.**

1. Conduct inspections during hours when the plant is normally open for business. Open the inspection by making contact with the plant manager or authorized representative (e.g., the quality assurance manager or the production manager).
2. Present the proper credentials and explain the reason for the visit (e.g., routine or follow-up inspection or consumer complaint).
3. Request access to quantity measurement equipment in the packing room, moisture testing equipment in the laboratory or in the packing room, and product packed on premise or stored in warehouse areas.
4. Obtain permission from a plant representative prior to using a tape recorder or a camera.

5. Conduct inspection related activities in a professional and appropriate manner and, if possible, work in an area that will not interfere with normal activities of the establishment.
6. Abide by all the safety and sanitary requirements of the establishment and clean the work area upon completion of the inspection/test. Return borrowed equipment and materials.
7. To close the inspection, recheck inspection reports in detail and ascertain that all information is complete and correct.
8. Sample questions and tasks for Inspectors:

(a) Inside Buildings and Equipment.

- i. Is all filling and associated equipment in good repair?
- ii. Are net content measurement devices suitable for the purpose being used?
- iii. Are standards used by the firm to verify device accuracy traceable to NIST?

(b) Packing Room Inspection.

- i. Observe if the program for net quantity of content control in the packing room is actually being carried out.
- ii. Ensure that the weighing systems are suitable and tare determination procedures are adequate. If there are questions regarding tare determination, weigh a representative number of tare and/or filled packages.
- iii. For products labeled and filled by volume and then checked by weight, ensure that proper density is used.

(c) Warehouse Inspection.

If an inspection is conducted:

- i. Select lot(s) to be evaluated.
- ii. Determine the number of samples to be inspected. Use the appropriate sampling plan as described in NIST Handbook 133, "Checking the Net Content of Packaged Goods."
- iii. Randomly select the number of samples or use a mutually agreed on plan for selecting the samples.
- iv. Determine the average net quantity of the sample and use the standard deviation factor to compute the Sample Error Limit (SEL) to evaluate the lot.
- v. Look for individual values that exceed the applicable Maximum Allowable Variation as found in NIST Handbook 133.
- vi. Apply moisture allowances, if applicable.
- vii. Review the general condition of the warehouse relevant to package integrity, good quantity control, and distribution practices.
- viii. Prepare an inspection report to detail findings and actions.



9. Close the inspection - Review findings with Plant Representative.

After the inspection, meet with the management representative to discuss inspection findings and observations. Provide additional information as needed (e.g., information on laws and regulations or explanations of test procedures used in the inspection). Be informative, courteous and responsive. If problems/violations are found during the inspection/test, bring them to the attention of the appropriate person.

#### **B. Plant Management Responsibilities.**

1. Recognize that inspectors are enforcing a federal, state or local law.
2. Assist the official in conducting inspection activities in a timely and efficient manner.
3. During the initial conference with the inspector, find out whether the inspection is routine, a follow-up, or the result of a consumer complaint. If a complaint, obtain as much information as possible concerning the nature of the complaint, allowing for an appropriate response.
4. The plant manager, quality assurance manager, or any designated representative should accompany the inspector.
5. Plant personnel should take note of the inspector's comments during the inspection and prepare a detailed write-up as soon as the inspection is completed.
6. When an official presents an inspection report, discuss the observations and, if possible, provide explanations for any changes deemed necessary as a result of the inspection/test.

Plant Management: information that must be shared with the inspector.

1. Establishment name and address.
2. Type of firm and information on related firms or applicable information (e.g., sub-contractor, servant, or agent).
3. General description and location of shipping and storage areas where packaged goods intended for distribution are stored.
4. Commodities manufactured by or stored at the facility.
5. Names of responsible plant officials.

Plant Management: information that may be shared with the inspector.

1. Simple flow sheet of the filling process with appropriate net content control checkpoints.
2. Weighing or measuring device maintenance and calibration test records.
3. Type of quantity control tests and methods used.
4. Net content control charts for any lot, shipment, or delivery in question or lots which have previously been cited.
5. Method of date coding the product to include code interpretation.
6. Laboratory reports showing the moisture analysis of the products which are in question or have been previously cited.

7. Product volume of lot sizes or related information.
8. Distribution records related to a problem lots including names of customers.

### 2.6.13. Guideline for Verifying the Labeled Basis Weight of Communication and Other Paper.

(L&R, 1998, p. 27)

**2.6.13.1. Equipment.** – Linear measure recommended in Section 5.3.1. Equipment in the third edition of NIST Handbook 133 “Checking the Net Contents of Packaged Goods.”

- Scale with a minimum division of 0.5 g (0.001 lb) or less.
- Scientific calculator with a sample standard deviation function.

**2.6.13.2. Scope and Recommended Enforcement Approach.** – Paper is manufactured in various “basis weights” for use in different applications (e.g., copy paper can have a basis weight of 18 or 20 lb). Basis weight is part of the product identity and not a declaration of net contents. This procedure is used to audit the basis weight declared on package labels. If the tested packages in a sample do not have an average basis weight equal to or greater than the labeled basis weight, the inspection lot may be in violation. A potentially violative lot should be placed “off-sale” until the owner provides documentation to confirm that the labeled basis weight corresponds to the basis weight declared by the original manufacturer. If documentation is not provided, the inspection lot should remain “off-sale” until the basis weight declaration is corrected.

**2.6.13.3. Determine Target Net Weight for Common Types of Paper.** – The basis weight of paper is the designated weight (measured in grams or pounds per specified area) of one ream in basic sheet size for the type of paper being tested. This procedure permits the confirmation of basis weight by linear measurement and gravimetric testing. This procedure is designed to test the various types, size, count, and basis weights of packaged paper currently in the marketplace. Table 1 lists the “area of basic sheet size” for common types of paper. A “ream” equals 500 sheets of basic sheet size for all types of paper other than tissue paper. A “ream” of tissue paper equals 480 sheets. Each of the standard categories of paper products shown in Table 1 has a different standard basic sheet size. Although there are basic sheet sizes, paper is packaged and marketed in various sizes and counts. The net weight of packaged paper can be determined from the label information using the General Formula for Sheet Paper. For roll paper, use one (1) for the sheet count.

#### General Formula for Sheet Paper

$$\frac{PA \times BW}{BSS} \times \frac{SC}{500} = TNW$$

Where:

PA	=	measured area of one sheet of paper
BW	=	labeled basis weight
BSS	=	area of basic sheet size from Table 1
SC	=	labeled package sheet count
TNW	=	target net weight of paper

**2.6.13.4. Test Procedure.** – The following gravimetric, measuring, and counting procedures shall be used to determine if packages are accurately labeled. Procedures are also provided for verifying net quantity of content declarations for count and dimensions (e.g., length and width.)

**2.6.13.4.1. Sample Selection.** – Select a sample from an inspection lot using Table 2-1 Sampling Plans of Category A (page A-2) in the fourth edition of NIST Handbook 133, “Checking the Net Contents of Packaged Goods.” Determine an average tare weight in accordance with Section 2 of the fourth edition of NIST Handbook 133.

**2.6.13.4.2. Determine Target Net Weight of Common Types of Paper Packaged in Various Sizes or Counts.**

Verify the basis weight declared on a package using the following gravimetric procedure:

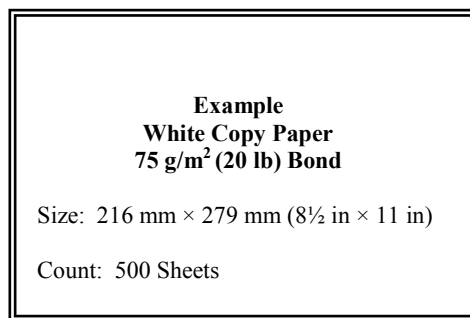
- a. Record the following information from the package label on a worksheet. (See Figure 1 for a sample label.)
  1. Type of Paper (TP)
  2. Length (L)
  3. Width (W)
  4. Package Sheet Count (PSC)
  5. Basis Weight (BW)
  6. Basic Size Sheet (BSS)
- b. Compute the Target Net Weight (TNW) for the sample packages using the General Formula for Sheet Paper. TNW is what the paper should weigh if the labeled properties of the packaged paper are accurate.)
- c. Determine the average net weight of the sample packages. (Do not use sample error limit calculations.) If the average net weight is not equal to or more than the Target Net Weight, go to Section 2.6.14.3. to determine if the labeled basis weight (BW) is correct. If the average net weight is equal to or more than the labeled basis weight, the sample passes.

**Basis Weight Worksheet** (see Figure 1)

Type of Paper (TP):	Copy Paper
Length (L):	11 in
Width (W):	8½ in
Area (PA) of Sheet (L×W):	93.5 in <sup>2</sup>
Package Sheet Count (PSC):	500
Basis Weight (BW):	20 lb
Basic Sheet Size (BSS):	17 in × 22 in
Area of BSS from Table 1 or by calculation:	374 in <sup>2</sup>

Use the General Formula to compute Target Net Weight (TNW):

Target Net Weight (TNW) = 5 lb



**Figure 1. Sample Label**

**NOTE:** Three factors will cause actual sample weights to differ from the TNW:

Actual sheet count in package	
Actual basis weight of paper being tested	$\frac{(93.5 \text{ in}^2 \times 20 \text{ lb})}{374 \text{ in}^2} \times \frac{500}{500} = 5 \text{ lb}$
Actual dimensions of the paper being tested	

**2.6.13.4.3. Determine Basis Weight.**

This procedure is used to identify potentially violative packages. If the Average Basis Weight (ABW) for the sample determined by this procedure is not equal to or greater than the labeled basis weight, other steps must be taken. Moisture affects the weight of paper, but the moisture content of paper can only be determined in a measurement laboratory according to the Technical Association of the Pulp and Paper Industry (TAPPI) (URL: [www.tappi.org/](http://www.tappi.org/)) TAPPI – T410 om-08, “Grammage of Paper and Paperboard (Weight per Unit Area).”

- a. Verify the basis weight for each package according to the following steps:
- i. Identify the paper type from Column 1 in Table 1 and record the area for the paper type from Column 2.
  - ii. Select a sample of paper from each of the tare sample packages. Use a sample of exact count to eliminate the possibility that the packages are short count.
    - For packages with more than 100 sheets, use 100 sheets; or
    - For packages with 100 sheets or less, verify the sheet count and use all of the sheets.
  - iii. Use a basis weight work sheet and determine the number of basic size sheets the paper sample represents with the following formula:

$$\frac{PA}{A} \times EC = ENBSS$$

Where:

A	=	area of basic sheet size from Table 1
PA	=	area (l x w) of one sheet of paper
EC	=	exact sheet count of sample
ENBSS	=	equivalent number of basic size sheets

- iv. Determine the average basis weight,

Where:

BW	=	basis weight for each package
ABW	=	average basis weight
ENBSS	=	equivalent number of basic size sheets from step iii
NW	=	net weight of sample
RC	=	Ream Count (500; for tissue paper, use 480)

- v. Repeat this step for each paper package from the tare sample and average the basis weights to obtain an Average Basis Weight (ABW). If the ABW is less than the labeled basis weight, or if the difference between the basis weight of the sample packages is more than 1 scale division, measure and compute the basis weight for each of the remaining packages.
- vi. Weigh each sample. If the basis weight from step iv is less than the labeled basis weight, recalculate the target net weight by using the general formula for sheet paper.

<b>Table 1. Common Types of Paper and Area of Basic Sheet Size</b>	
<b>Paper Type</b>	<b>Area</b>
Bond, Ledger, Thin, Writing, and Track Feed Printer Paper	2412 cm <sup>2</sup> (374 in <sup>2</sup> )
Manuscript Cover	3599 cm <sup>2</sup> (558 in <sup>2</sup> )
Blotting	2941 cm <sup>2</sup> (456 in <sup>2</sup> )
Cover	3354 cm <sup>2</sup> (520 in <sup>2</sup> )
Blanks	3974 cm <sup>2</sup> (616 in <sup>2</sup> )
Printing Bristols	4135 cm <sup>2</sup> (641 in <sup>2</sup> )
Wrapping, Tissue, Waxed, Newsprint and Tag Stock	5574 cm <sup>2</sup> (864 in <sup>2</sup> )
Book, Offset, and Text	6129 cm <sup>2</sup> (950 in <sup>2</sup> )
Index Bristol	5019 cm <sup>2</sup> (778 in <sup>2</sup> )

- vii. Use the target net weight computed in step vi and re-weigh the inspection lot samples using the Section 2. of the fourth edition of NIST Handbook 133. If inspection sample weights differ from the target net weight computed using the average basis weight determined in vi, the label sheet count is probably inaccurate.
- b. Verify the label sheet count by counting the number of sheets in each package.
- c. Verify sheet dimensions (length x width) for each package of the sample.

$$\frac{NW \times RC}{ENBSS} = BW$$

#### 2.6.13.4.3.1. Other Types of Packaged Paper.

1. Roll Paper. – When testing rolled paper, cut a length of paper from the roll equal to 9350 divided by the width of the paper in inches. Make sure the ends of this length of paper are square. Proceed to section 2.6.14.3 step a. Disregard the exact sheet count in step iii.
2. Continuous Track Feed Printer Paper:
  - i. Count out a sample of 100 sheets from each tare sample package of the inspection lot.
  - ii. Weigh each 100 sheet sample and record the weights.
  - iii. Calculate an average weight.
  - iv. Remove printer track feed strips from each sample.
  - v. Re-weigh each sample after the tractor feed has been removed and record the weights.
  - vi. Calculate an average weight from step v.
  - vii. Calculate percentage (%) difference in the average weights in steps iii and vi.

- viii. After the track feed strips have been removed, use the samples to verify the basis weight for the packages of the inspection lot using the formula in 2.6.14.2. If the basis weight is less than the labeled basis weight, refer to 2.6.13.2.
- ix. If the basis weight established in step viii is the same as the labeled basis weight, weigh the remaining packages from the sample and compare the actual net weights with the TNW. (Remember to adjust the TNW up by the percentage established in step vii.)
- x. If the adjusted weights of the remaining samples is less than the TNW, the deficiency may have been caused by:
  - a. the sheet count in the package.
  - b. the basis weight of the paper.
  - c. the dimensions of the paper.
  - d. combinations of the above.

This procedure is for use in verifying that the basis weight included in a statement of identity is not misleading or deceptive. It is not intended to be used as the final criterion on which enforcement action is taken. Instead, the test procedure is only used to identify potentially volatile lots. There are two alternative actions that can be taken if the test results indicate that a lot is potentially volatile. The first is to review the documentation supplied by the original manufacturer to the converter to determine if any misrepresentation has occurred. The second is to collect packages of the paper and test them according to the latest version of ASTM International Method D646 for “Grammage of Paper and Paperboard.”

#### **2.6.14. Labeling Guidelines for Chamois.**

(L&R, 1999, p. L&R-25)

These requirements are based on the Uniform Packaging and Labeling Regulation in the 1999 edition of NIST Handbook 130, “Uniform Laws and Regulations” and regulations and guidelines of the Federal Trade Commission.

#### **General**

The following information must be declared on the principal display panel of the chamois package. The principal display panel is the tag, or label that consumers can examine under normal and customary conditions of display.

- Identity - what the package contains
- Net Quantity of Contents - how many items the package contains and the area of the item(s)

The following information may appear anywhere on the package.

- Responsibility – the party responsible for packaging or distributing the product.

**2.6.14.1. Declaration of Identity.** – Chamois is a natural product made of sheepskin which has been oil tanned. In 1964, the FTC issued an advisory opinion stating that using the word “chamois” on a product (e.g., “Artificial” Chamois, “Synthetic” Chamois, “Pig Chamois” or “Man Made” Chamois) that is not made from oil tanned sheepskin is unlawful and deceptive. Packages are required to declare identity in terms of:

- i. the name specified in or required by any applicable federal or state law or regulation or, in the absence of this,

- ii. the common or usual name or, in the absence of this,
- iii. the generic name or other appropriate description, including a statement of function.

**Example:**

Chamois, Natural Chamois Leather

**2.6.14.2. Declaration of Net Quantity of Contents.** – The following information is required to appear on the lower 30 % of the principal display panel of all packages:

**Count**

- The package must include a count declaration (e.g., 1 Chamois) unless the statement of identity clearly expresses the fact that only one unit is contained in the package. A package containing two or more units shall bear a statement in terms of count (e.g., 2 Chamois).

**Area**

- Chamois packages must have area declarations in both inch-pound and metric units.

**Metric**

- For areas that measure less than 1 m<sup>2</sup>, the area shall be stated in square decimeters and decimal fractions of a square decimeter or in square centimeters and decimal fractions of a square centimeter;
- For areas that measure 1 m<sup>2</sup> or more, the area shall be stated in square meters and decimal fractions to not more than three places.

To facilitate value comparison and simplify the measurement process, chamois should be measured in one quarter square foot (2.322 57 decimeter) increments. Dimensions should be rounded down to avoid overstating the area.

For example: 2 square feet (18.5 square decimeters) or 2 ft<sup>2</sup> (18.5 dm<sup>2</sup>)

**Conversion Factors:**

$$1 \text{ ft}^2 = 9.290 \text{ 30 dm}^2$$

$$1 \text{ in}^2 = 6.451 \text{ 6 cm}^2$$

$$1 \text{ yd}^2 = 83.612 \text{ 7 dm}^2$$

**Inch-pound Units**

- For areas that are less than 1 ft<sup>2</sup> (929 cm<sup>2</sup>), the area declaration shall be expressed in square inches and fractions of square inches;
- For areas of 1 ft<sup>2</sup> (929 cm<sup>2</sup>), or more, but less than 4 ft<sup>2</sup> (37.1 dm<sup>2</sup>), the area shall be expressed in square feet with any remainder expressed in square inches or in fractions of a square foot;
- For areas of 4 ft<sup>2</sup> (37.1 dm<sup>2</sup>) or more, the area should be expressed in terms of the largest whole unit (e.g., square yards, square yards and square feet, or square feet) with any remainder expressed in square inches and fractions of a square inch or in fractions of the square foot or square yard.

Chamois labeled for retail sale is exempt from these requirements if (a) the area of a full skin is expressed in terms of square feet with any remainder in terms of the common or decimal fraction of the square foot

(929 cm<sup>2</sup>), or (b) the area for cut skins of any configuration is expressed in terms of square inches and fractions thereof. Where the area of a cut skin is at least one square foot (929 cm<sup>2</sup>) or more, the statement of square inches shall be followed in parentheses by a declaration in square feet with any remainder in terms of square inches or common or decimal fractions of the square foot.

**Prohibited Labeling Practices**

- Do not use qualifying terms or phrases (e.g., “Approximate Size,” “Size when Wet,” “Up to 20 % Larger When Wet”).
- Do not use unacceptable symbols (e.g., using (") as a symbol for inches is not acceptable).

**2.6.14.3. Declaration of Responsibility.** – The name and address of the manufacturer, packer, or distributor must be conspicuously specified on the label of any package that is kept, offered, exposed for sale, or sold anywhere other than the premises where packed. The name shall be the actual corporate name, or, when not incorporated, the name under which the company does business. This declaration does not have to appear on the principal display panel.

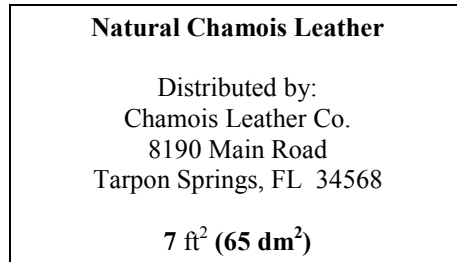
**For example:**

Chamois Tanning Company  
 8190 Main Road  
 Tarpon Springs, FL 34568

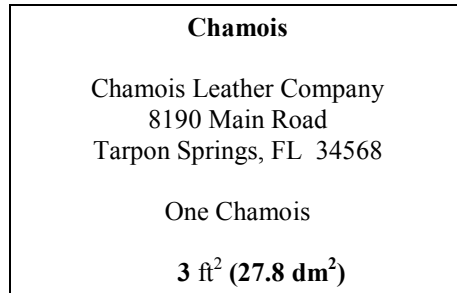
The address shall include street address, city, state (or country if outside the United States), and ZIP Code (or the postal code, if any, used in countries other than the United States); however, the street address may be omitted if it is shown in a current city directory or telephone directory.

**Sample Labels**

1. If one natural chamois is in a see through package, the following label would be acceptable:



2. The next sample would apply if one chamois is in a package and the statement of identity does not clearly express the fact the package only contains one unit.





**2.6.15. Labeling Guidelines for Natural and Synthetic Sponges.**

(L&amp;R, 1999, p. L&amp;R-31)

These requirements are based on the Uniform Packaging and Labeling Regulation in NIST Handbook 130, “Uniform Laws and Regulations” and regulations and guidelines of the Federal Trade Commission. All indicated dimensions and conversions from metric to inch-pound units are approximate only and are used for illustration purposes only.

**General**

The following information must be declared on the principal display panel (PDP) of a package of sponge(s). The PDP is the part of label (or package) most likely to be displayed, presented, shown to or examined by consumers. A tag or spot label may be used.

- Identity – what the package contains
- Net Quantity of Contents – how many items in the package and the dimensions of the item(s)

The following information may appear anywhere on the package.

- Responsibility – the name of the processor or distributor

**2.6.15.1. Declaration of Identity.**

- a. A declaration of identity that clearly describes the origin and other relevant information about the sponge must appear on the label of each package. The identity of a sponge must include information about its origin (i.e., is it a natural or synthetic sponge). The identity shall be in terms of (i) the name specified in or required by applicable federal or state law or regulation, or (ii) the common or usual name, or (iii) the generic name or other appropriate description.

**For example:**

Sea Wool Sponge, Rock Island Sponge, Sea Grass Sponge, Sea Yellow Sponge, or Atlantic Silk Sponge

- Origin - Natural or Synthetic
  - For natural sponges, the label must specify if they are “Cut” or “Form.” “Cut” sponges are those that have been cut into halves, quarters, or fourths while “forms” are whole sponges.
  - For natural sponges, indicate type of sponge (e.g., “silk,” “seawool,” or “yellow”)
- b. Identifiers
    - Terms which indicate locations of origin on some natural sponges (e.g., “Atlantic Sea Sponge”) are permitted to be used for identification if they accurately describe the source of the sponge.
    - Use of terms that may be interpreted by consumers to imply quality, durability, or “expert” endorsement (e.g., “professional quality sponge”) are permitted as identifiers if they are not misleading. However, terms that imply quality should be used with care if they are not based on a recognized grading system. Use of terms to describe sponge texture such as “fine,” “medium,” or “coarse” are acceptable.

**2.6.15.2. Declaration of Net Quantity of Contents.** – The following information must appear on the lower 30 % of the principal display panel of all packages:

- Count

The package must include a count declaration (e.g., 1 sponge) unless the statement of identity clearly expresses the fact that only one unit is contained in the package. A package containing two or more units shall bear a statement in terms of count (e.g., 2 sponges).

- Dimensions

The package must include the dimensions of the sponges in inches and centimeters.



Silk Sponges

To facilitate value comparison and simplify the measurement process, sponges should be measured in ½ in (1 cm) increments. Dimensions should be rounded down to avoid overstating the size of a sponge.

**For example:**

- 6 in, 6½ in, and 7 in for inch declarations;
- 15 cm, 16 cm, and 17 cm for metric declarations

- Synthetic sponges: the dimensions shall include length x width x height (thickness). Either unit of measure can be the primary declaration (e.g., the metric or inch-pound units can be presented first).

1 Sponge 17 x 10 x 5 cm (7 x 4 x 2 in)

- Natural sponges: the declaration shall be a single measurement representing the maximum dimension of one axis of a sponge that is passed through a circular template. When measured, the sponge is “classified” as a specific size when at least three (including two opposing) points of the sponge touch the template (e.g., see graphic on the following page where the sample sponge is designated as a 7 in [17 cm] sponge).

As the following pictures show, natural sponges are irregular in size and shape and have traditionally been measured using this procedure. It is difficult to develop a meaningful or cost effective measurement process that would provide a means of direct comparison between synthetic and natural sponges based on dimensions. Requiring declarations, such as average height, length, or width of natural sponge procedures would increase the costs for industry and consumers.

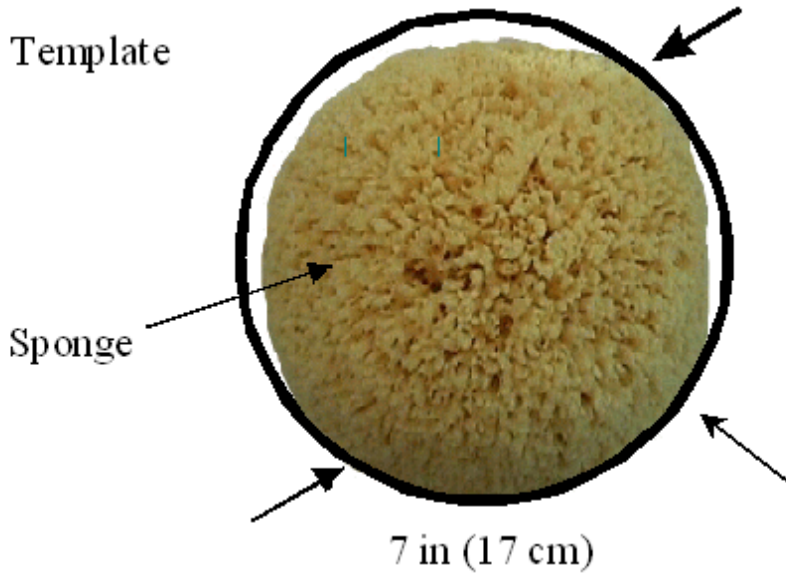


Sea Wool Sponges

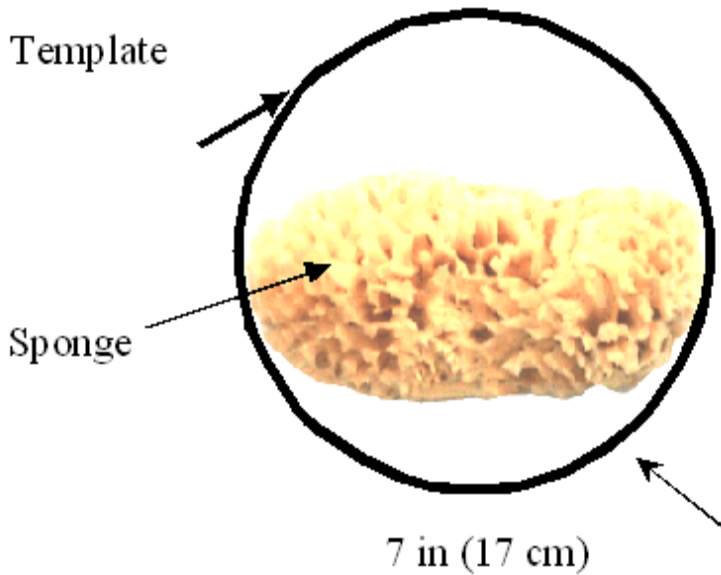


Sea Grass Sponges

This graphic illustrates an irregular form of a natural sponge passing through a 17 cm (7 in) template and touching at least two opposite points. This sponge could be labeled 7 in.

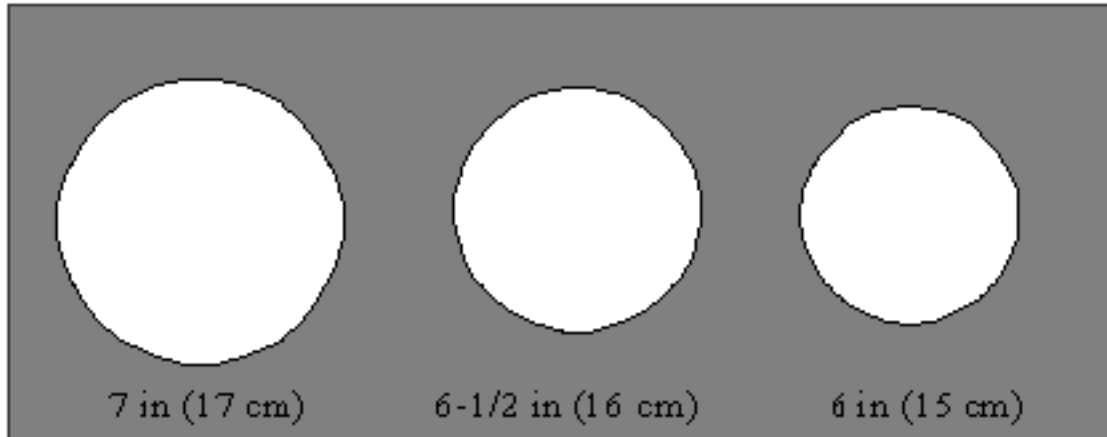


- For banana sponges the size will be determined as shown below. This sponge is 17 cm (7 in).



Good Measurement Practice

- Dimensions are determined with the sponge wet.
- Measuring templates (see photo below for the currently used type templates):



- should be constructed of rigid metal or plastic material.
- circular openings should graduate in increments of one-half inch (one centimeter).
- The error in the circular openings shall not be greater than  $\pm \frac{1}{32}$  in ( $\pm 0.79$  mm) as specified in Table 2. Tolerances in Section 5.52. Linear Measures of NIST Handbook 44 “Specifications, Tolerances, and Technical Requirements for Weighing and Measuring Devices.”



#### Prohibited Labeling Practices

- Stating country of origin declarations that are not accurate.
- Declaring ranges of dimensions (e.g., 4"- 5" in) or using terms such as “half or semi form” instead of either “cut” or “form.”
- Using qualifying terms. (e.g., “Wet Size,” “Approximate” or “Jumbo”)
- “Anti-bacterial” claims must meet EPA requirements.
- Using type size that does not meet minimum height requirements.
- Using unacceptable symbols (e.g., using (") as a symbol for inches is not acceptable).

**2.6.15.3. Declaration of Responsibility.** – The name and address of the processor or distributor must be specified on the label of any package that is kept, offered, or exposed for sale, or sold anywhere other than the premises where packed. The name shall be the actual corporate name or, when not incorporated, the name under which the business is conducted.

#### For example:

Processed by  
Argonaut Sponge Company  
8190 Main Road  
Tarpon Springs, Florida 34568

The address shall include street address, city, state (or country if outside the United States), and ZIP Code (or the postal code, if any, used in countries other than the United States); however, the street address may be omitted if this is shown in a current city directory or telephone directory.

**Sample Labels**

**Yellow Sponge Cut**  
 Argonaut Sponge Company  
 8190 Main Road  
 Tarpon Springs, FL 34568  
  
**One - 17.5 cm (7 in)**

If a natural sponge is in a box, carton, or package that does not permit consumers to see how many sponges are in the box, the package must include a count declaration (e.g., 1 sponge) unless the statement of identity clearly expresses the fact that only one unit is contained in the package. A package containing two or more units shall bear a statement in terms of count (e.g., 2 sponges). The following sample label would apply.

**Synthetic Sponge**  
  
 Made by:  
 Argonaut Sponge Company  
 8190 Main Road  
 Tarpon Springs, FL 34568  
  
**17.7 x 10 x 5 cm (7 x 4 x 2 in)**

**Synthetic Sponge**  
  
 Made by:  
 Argonaut Sponge Company  
 8190 Main Road  
 Tarpon Springs, FL 34568  
  
**1 - Sponge 17.7 cm x 10 x 5 cm (7 in x 4 in x 2 in)**

If a package does not permit the consumer to see how many sponges are the box, it must include a count declaration (e.g., 1 sponge) unless the statement of identity clearly expresses the fact that only one unit is contained in the package. A package containing two or more units shall bear a statement in terms of count (e.g., 2 sponges). A transparent bag of small pieces of sponge may be sold on the basis of count if the words “Irregular Dimensions” appear in conjunction with the declaration of count (e.g., 10 Sponges - Irregular Dimensions).

**2.6.16. Minimum Fuel Flush for Octane Verification.**

(L&R, 2000, p. L&R-13)

A minimum of 1.2 L (0.3 gal) of motor fuel shall be flushed from a dispenser before taking a sample for octane verification. The flush shall be returned to the storage tank containing the lowest octane.

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