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Contract Sales Using Retail Motor-fuel Dispensers

By Dick Suiter

What constitutes a “contract” sale of retail motor fuel? Currently, systems used for contract sales are exempt from several requirements in NIST Handbook 44 Liquid-Measuring Devices Code including Paragraphs S.1.6.4.1.(b) Unit Price, S.1.6.5.(a) Money-Value Computations, S.1.6.5.4. Selection of Unit Price, S.1.6.7. Recorded Representation, UR.3.2. Unit Price and Product Identity, and UR.3.3. (a) Computing Device.

In 1993 a definition was added to Handbook 44 that states a “contract sale” is a sale where there is a written agreement stating the price as either a fixed price, a price above cost, or an adjustment from the posted price.

In 1992 prior to the adoption of the definition, the discussions of the S&T Committee indicated that a “contract sale” is one where a *written contract* states the price of the product as either a specific price, a nonzero adjustment to the retail posted price, or an adjustment based upon the cost of the product to the service station. Under these conditions, club accounts that offer the product to the general public based solely upon credit checks to become members of a "club" (i.e., there is no contract for product price) are not considered “contract sales” and are subject to the requirements of S.1.6.5. and the subparagraphs thereunder.

In 1993 the S&T Committee wanted to clarify that a "club sale" does not automatically fall under the category of a "contract sale," the Committee recommended that the reference to "club sale" not be included in the definition. The Committee stated that if a "club sale" met the definition of a contract sale, the criteria applied.

In 2002 the Handbook 44 definition for “contract sale” was modified to include examples of possible contract sales. The examples include, but are not limited to, e-commerce, *club sales*, or pre-purchased agreements. Some have incorrectly interpreted this to mean that all club sales are contract sales. The list of examples was not intended to make any change to the 1993 position of the S&T Committee. The examples listed must still meet the criteria of the definition to qualify as a contract sale.

Since the time that the exemptions (and associated definition) for contract sales were added to Handbook 44, marketing practices and technology have changed making it difficult to consistently interpret and apply the Handbook criteria. Some examples of marketing strategies brought to WMD’s attention are outlined below:

- A discount of 4 cents per gallon is given when using a club membership card or loyalty card.

- One major oil company offers a 5-cents-per-gallon discount for fuel purchases at their stations when the customer uses the same oil company's issued credit card.
- In another case at least one membership warehouse allows the use of most debit cards when used in conjunction with a membership card, but accepts only one major credit card, for fuel purchases at their dispensers. When the recognized credit card is used, the consumer can receive a rebate of 1 % on all purchases made at the membership warehouse including fuel purchases. In this case the dispenser does not compute the "discount price," but it is calculated and given, along with rebates for other purchases, on the credit card statement.
- In the recent past consumers had the ability to "bid" online from their home PC for a price per gallon for gasoline at nearby participating retail service stations.
- Trial programs at convenience stores, and super markets with gasoline dispensers, offer a discount on fuel purchases when certain products are purchased in the store. In one case cited if a consumer purchased enough qualifying items the unit price of fuel could be as low as 1 cent per gallon. This particular marketing strategy is similar to a rebate or coupon program. The fuel discount may be calculated by the cash register and reflected on the receipt when payment is made for both fuel and other items or the customer may receive a receipt that contains information (bar code or numbers code) that provides a discount on future fuel purchases at the dispenser.

The first scenario with the 4-cents-per-gallon discount for using a club card is little different than a marketing incentive that gives a 4-cents-per-gallon discount for paying cash. The actual price paid by the customer can change at any time without the member or cardholder receiving any written notice. Yet jurisdictions may differ as to whether or not the dispenser must display both the non-member price and the discounted (member) price (though not simultaneously) when the club card is used.

Because of the confusion in determining how to apply existing requirements to these scenarios, WMD believes it is time to revisit the definition for contract sales and the unit price posting requirements. The basic criteria for these requirements should ensure that the consumer has a clear understanding of the transaction and can make a value comparison, and ensure that the transaction does not facilitate fraud.

The existing criteria need to be reviewed and recommendations developed for Handbook 44 requirements that better address these scenarios. As part of that process, WMD is interested in hearing about other new incentive or loyalty programs that are being tested and used in the marketplace. If you have examples and information you want to share or if you have suggestions about how to modify the existing requirements, please contact richard.suiter@nist.gov.