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Industry Standards *versus* Legal Requirements

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Weights and Measures jurisdictions routinely face the dilemma of enforcing legal requirements when an industry or firm utilizes measurement practices contrary to weights and measures requirements. Typically, these measurement practices or “special tolerances” have been in use for long periods of time and have gone unnoticed or unregulated by any presiding weights and measures authority. These practices often perpetuate because a firm turns to other businesses for help in determining “how they do it” when, in fact, these “model” firms may fail to conform to legal requirements. In other cases, unacceptable practices or tolerances are taken from a voluntary industry standard issued by a trade or industry organization that may have been developed without consideration of legal requirements.

Many violations first come to light when a consumer reports a violation to the local weights and measures authority. At times, serious violations have occurred throughout an entire industry. These violations often cross jurisdictional borders, making it more difficult for a single jurisdiction to deal with the problem. As a result, some administrators may feel that the problem is beyond the resources of their jurisdiction to bring the unacceptable practice under control. Dozens of industry and trade organizations, both nationally and internationally, further complicate the issue by developing voluntary standards and recommendations that are not always consistent with weights and measures laws.

In 1992, the National Conference on Weights and Measures (NCWM) Laws and Regulations (L&R) Committee addressed the subject of industry standards *versus* legal requirements and issued the interpretation that adequate enforcement tools were already in place for individual jurisdictions to enforce weights and measures laws and regulations. Specifically, the L&R Committee agreed that Sections 15 and 16 of the Weights and Measures Law, “Misrepresentation of Quantity” and “Misrepresentation of Pricing,” respectively, provide adequate legal controls to eliminate unlawful practices. These sections require firms to provide accurate quantity information on the products they sell. Firms that use inaccurate measurement practices or measurement devices that present quantity information that tends to mislead or deceive buyers operate in violation of these provisions. Should industry want the legal standards changed, the Committee agreed such changes could be made through appropriate legal channels to amend the Uniform Packaging and Labeling Regulations and the Method of Sale of Commodities Regulations or NIST Handbook 133. Tolerances prescribed in industry standards or publications do not apply unless they have been adopted or referenced as legal requirements.

The Committee will continue to work with industry and trade associations to provide input on industry standard development and seek their involvement in the work of the NCWM on issues of mutual concern.