53rd Annual Western Weights and Measures Association Conference
Laws and Regulations Committee

Final Report of the
Laws and Regulations Committee

Tim Lloyd, Chairman
Montana

Reference
Key Number

200 INTRODUCTION

The Laws and Regulation Committee submits its final report to the 53rd Annual Western Weights and Measures Association (WWMA) Technical Conference. Page numbers in Table A below refer to pages in the final report.

All voting items presented to the general membership were approved and are presented as recommendations of the WWMA for consideration by the National Conference on Weights and Measures at its interim meeting scheduled for January 23-26, 2011 in Dallas, Texas.

This report contains recommendations to amend National Institute of Standards and Technology (NIST) Handbook 130, 2011 Edition, “Uniform Laws and Regulations,” or NIST Handbook 133, “Checking the Net Contents of Packaged Goods,” Fourth Edition (January 2011). Proposed revisions to the handbook(s) are shown in bold face print by striking out information to be deleted and underlining information to be added. New items proposed for the handbooks are designated as such and shown in bold face print. Text presented for information only is shown in italic print. When used in this report, the term “weight” means “mass.”

New proposals are labeled as attachments. Voting items are indicated by the suffix V. If the item is informational, it is indicated by the suffix I; if the item is withdrawn it is indicated by the suffix W. Items marked with a D after the key number are developing items. The developing designation indicates an item has merit; however, is returned back to the submitter for further development before any action at the national level.

Note: The policy of NIST is to use metric units of measurement in all of its publications; however, recommendations received by the NCWM technical committees have been printed in this publication as they were submitted and, therefore, some may contain only reference to inch-pound units.

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231 PACKAGING AND LABELING REGULATION (PLR)

231-1 D HB 130, Packaging and Labeling Requirements, Section 6, Declaration of Quantity: Consumer Products Packages

Source: Northeastern Weights and Measures Association

Discussion: A manufacturer representative stated that several large manufactures are already using pictograms on packages. The representative is asking for clear guidance and language from the NCWM as to whether use of pictograms is acceptable. There were questions raised on who would maintain, approve, and standardize these pictures and symbols. A county and a state official questioned how “acceptable” pictograms, if approved, would be controlled. The officials further stated that use of a pictogram should not replace current language for net quantity.

Committee Recommendation: The committee recommends that this item remain developing so that the National Laws and Regulations Committee can get further guidance from the FTC regarding this proposal. It is also recommended that more information on the use of pictograms internationally be gathered. The committee further recommends that use of a pictogram be made supplemental, if used, and not part of the net quantity statement.

232 METHOD OF SALE REGULATION

232-1 V Method of Sale Regulation Section 2.13.4. “Declaration of Weight”

Source: Western Weights and Measures Association

Discussion: A state official commented that 10 companies have filed complaints concerning products being mislabeled where the density was unknown. A state official submitted new language to replace the existing language in the item. This is stated below. Two county officials spoke in support of this item as amended which would greatly assist weights and measures officials in the field. A county official submitted a letter of support.

Existing Language:

For the purpose of this regulation, when D is not known, the minimum density (D) used to calculate the target net weight for linear low density polyethylene products (LLPD) and products other than high density (HDPE) shall be 0.92 g/cm³ (when D is not known).

For products labeled “High Density,” HDPE, or similar wording, the minimum density (D) used to calculate the target net weight shall be 0.95 g/cm³.

Amend Section 2.13.4. as follows:

For the purpose of this regulation, when (D) is not labeled on the package, the minimum density (D) used to calculate the target net weight for linear low density polyethylene products (LLDP) and products other than high density (HDPE) shall be 0.92 g/cm³ (when D is not known). For products labeled “High Density,” HDPE, or similar wording, that do not specify the minimum density (D) on the package label, the minimum density (D) used to calculate the target net weight shall be 0.95 g/cm³.

Committee Recommendation: The committee recommends this item as amended move forward as a voting item. The committee further recommends that the new language above be moved and inserted above “for SI dimensions” because the statement applies to both the SI and inch-pound dimensions.
232-2 I Uniform Regulation for Method of Sale of Commodities - Packaged Printer Ink and Toner Cartridges

Source: Southern Weights and Measures Association

Discussion: A NIST Technical Advisor informed the group that the current chair of the Packaged Printer Ink and Toner Cartridges Workgroup is unable to continue in this role. A search is underway by the NCWM for a new chair. Anyone interested in participating in this workgroup should contact the NIST Technical Advisor. No further comments were received.

Committee Recommendation: The committee recommends that this item remain informational.

237 ENGINE FUELS AND AUTOMOTIVE LUBRICANTS REGULATION

237-1 Engine Fuel Quality Requirements for Hydrogen
   237-1A I Specifications
   237-1B V Definitions

Source: Western Weights and Measures Association

Discussion: A state official, who is also a member of the U.S. National Hydrogen Workgroup (USNHWG), recommended that this item be split into two separate items. One item would address “Specifications for Hydrogen Fuel for Internal Combustion Engines and Fuel Cells”, the second item would address “Definitions”, with the existing language and definitions as currently outlined in the item. The state official commented that much work has been done by the USNHWG on definitions and that moving this to voting would help move the implementation and acceptance of hydrogen. It was stated that “specifications” could take years to develop.

Committee Recommendations: The committee recommends that this item be split into two separate items. The first item would address “Specifications for Hydrogen Fuel for Internal Combustion Engines and Fuel Cells” and would remain informational. The second item would address “Definitions”, with the existing language and definitions as currently outlined in the item and the committee recommends that this item (definitions) be moved forward as a voting item.

Item 237-1A I “Specifications for Hydrogen Fuel for Internal Combustion Engines and Fuel Cells

Item 237-1B V “Definitions”

237-2 I Engine Fuels and Automotive Lubricants Regulation, Section 3.15 Biodiesel and Biodiesel Blends

Source: Southern Weights and Measures Association

Discussion: An industry representative spoke in support of keeping this item informational and allow the Fuels and Lubricants Subcommittee (FALS) to further develop this item due to their expertise in this area. Another industry representative stated that all shipping documents should show the exact blend of biodiesel.

Committee Recommendations: The committee recommends that this item remain informational for further review by FALS.
260 NIST HANDBOOK 133

260-1 D Guidance on Allowing for Moisture Loss and Other Revisions

Source: Moisture Loss Work Group (MLWG).

Discussion: A county official expressed concern that the existing item as written does not provide specific guidance to weights and measures officials. In addition, the existing language is conflicting. For example, statements that moisture loss should be determined on a case by case basis and at the same time calls for a nationwide study. Both the county official and a manufacturer representative recommended that the MLWG focus its effort on developing clear criteria and process for determining moisture loss.

Committee Recommendations: The committee agrees that the current language does not provide acceptable guidance for field officials to determine moisture allowance. The committee also agrees that the current language is contradictory and vague and does not provide specific guidance to officials. For example:

- “should be a collaborative effort between officials and industry”
- “should be completed on nationwide basis”
- “must be based on scientific data”
- “must be developed on a case by case basis”
- “may be required to utilize specialized test equipment and specific laboratory procedures”
- “a coordinated effort involving industry, trade associations, weights and measures officials….may be required”

The committee recommends that this item remain developmental and be addressed by the Moisture Loss Workgroup with a clear focus on developing specific criteria and process for determining moisture loss.

260-2 V HB 133, Chapter 4.7. Polyethylene Sheeting - Test Procedure - Footnote Step 3

Source: Western Weights and Measures Association

Discussion: A state official commented that he is in support of this item with the proposed amended changes to replace the existing language.

Existing Language:

For the purpose of this handbook, when the actual density is not known, the minimum density used to calculate the target net weight shall be 0.92 g/cm³ when the actual density is not known. For products labeled “High Density,” HDPE, or similar wording, the minimum density (D) used to calculate the target net weight shall be 0.95 g/cm³.

Amended Language:

*Determined by ASTM Standard D 1505-98 (or latest issue) “Standard Method of Test for Density of Plastics by the Density Gradient Technique.” For the purpose of this regulation, when (D) is not labeled on the package, the minimum density (D) used to calculate the target net weight for linear low density polyethylene products (LLDP) and products other than high density (HDPE) shall be 0.92 g/cm³ (when D is not known). For products labeled “High Density,” HDPE, or similar wording, that do not specify the minimum density (D) on the package label, the minimum density (D) used to calculate the target net weight shall be 0.95 g/cm³.

Committee Recommendation: The committee recommends this item as amended move forward as a voting item.
260-3 V National Pasta Association - HB 133, Moisture Allowance for Pasta Products

Source: Southern Weights and Measures Association

Discussion: A state official expressed support for adopting a 3% moisture allowance for pasta citing the significant work done and data provided by the National Pasta Association.

Committee Recommendation: The committee recommends this item move forward as a voting item. The committee further recommends that any additional data regarding studies be provided for review.

270 OTHER ITEMS – DEVELOPING ITEMS

270-1 D Fuels and Lubricants Subcommittee (FALS)

Source: The Fuels and Lubricants Subcommittee

Discussion: No comments were heard on this item.

Committee Recommendation: The committee recommends this item remain developmental.
NEW PROPOSALS

Attachment #1  W  HB 130 Modify the Method of Sale for Oil Change Services

Discussion: An industry representative commented that this item is addressed in Attachment #9, “HB 130 - EFALR Section 3.13.1 Modify Labeling of Vehicle Motor Oil”. A state official questioned whether requiring a brand goes outside the realm of weights and measures and may simply be a way for industry to ensure that their brand is being correctly sold.

Committee Recommendations: The committee recommends that this item be withdrawn, since it is addressed in attachment 9.

Attachment #2  W  HB 130 EPA Ruling for Partial Waiver for E15 Blends

Discussion: A state official commented that no ruling has been issued to date. The official also noted that 2.1 of the Engine Fuels and Automotive Lubricants Regulation was amended in 2009. The changes are not reflected in the current HB 130, 2009 edition, but available as an addendum. It was noted that any changes to this item must reflect the most current revision as outlined in the 2010 addendum of section 2.1. An industry representative stated that this proposal be incorporated in new proposal #4, “HB 130 Section 2.1.2. Gasoline-Oxygenate Blends”.

Committee Recommendations: The committee recommends that this item be withdrawn, since it is addressed in attachment #4.

Attachment #3  V  Pelletized Ice Products

Discussion: No comments were heard.

Committee Recommendations: The committee recommends this item move forward as a voting item.

Attachment #4  D  HB 130 Section 2.1.2. Gasoline-Oxygenate Blends

Discussion: An industry representative noted that this is similar to attachment #2, “HB 130 EPA Ruling for Partial Waiver for E15 Blends” and is in support of this item. It was suggested this be sent to the FALS committee for development. An industry representative expressed concern the impact this decision could have on car warranties and potential liability issues. The representative stated that he opposed this item until an official ruling is made.

Committee Recommendations: The committee recommends that this item be made developmental.

Attachment #5  I  HB 130-Eng. Fuels & Automotive Lubricants Regulations Section 2.1.4 Minimum Octane Number

Discussion: No comments were made on this item.

Committee Recommendations: The committee recommends this item be made informational.
Attachment #6  W  HB 130 - UPLR Section 10.4 Multi-Unit Packages

**Discussion:** A manufacturer stated that they have been fined by a state regarding the method used to calculate total net weight on multi unit packages. The manufacturer stated that one method is more consumer friendly while the other is more accurate. The manufacturer is seeking input on the merit of this item before submitting specific language. A county official explained that whatever method is used, neither may overstate the actual net content. This historically has been the preferred method rather than requiring an exact conversion.

**Committee Recommendations:** The committee recommends that this item be withdrawn. The committee agrees that this is clearly permitted based on Section 6.13 of the UPLR, “Rounding”, which states that “in no case shall rounded net content declarations overstate a quantity; the packer may round converted values down to avoid overstating the net contents”.

Attachment #7  W  HB 130 - UPLR Section 5: Declaration of Responsibility

**Discussion:** A state official stated that this is the result of labeling issues found in the marketplace. The NIST Technical Advisor noted that use of the term “conspicuous” is common throughout the handbook as mentioned in the Method of Sale Section 2.20.1 and 2.27.2.2 for gasoline and in Section 6.16 Random Weight Packages of the UPLR. Adding a requirement for a minimum font size may nullify the term “conspicuous”, which is the current requirement under federal law. Consideration could be given to more clearly defining conspicuous based on current definitions (i.e. standing out as being clearly visible, obvious to the eye or mind, and easy to notice) and what a reasonable person would conclude. In addition, it was also suggested that the term “web addresses” be changed to “web URL’s” and consider including adding the inclusion of a phone number as also not being an acceptable replacement for the required information in the declaration of responsibility.

**Committee Recommendations:** The committee recommends this item be withdrawn. The committee agrees that the definition of “conspicuous” is adequate. In regards to adding language that web addresses are unacceptable, Section 5 of the UPLR already prohibits the use of web addresses as a replacement to the current requirement.

Attachment #8  V  HB 130 - UPLR Section 9: Prominence and Placement: Non-consumer Packages

**Discussion:** A state official commented that the same requirement should exist for consumer and non-consumer packages. There have been a lot of problems found in the marketplace. A NIST Technical Advisor noted that under the Fair Packaging and Labeling Act and under USDA regulations, there are no minimum height requirements. It was also noted that defining the term “definitely and clearly stated” by a qualifying statement that it be a minimum 1/16 inch in height could nullify its meaning. It was further mentioned that the term “definitely and clearly stated” also affects free area, style of type or lettering, minimum height of letters and numbers, and proportion of numbers and letters for non-consumer packages.

**Committee Recommendations:** The committee recommends that this item be moved forward as a voting item.

Attachment #9  I  HB 130 - EFALR Section 3.13.1 Modify Labeling of Vehicle Motor Oil

**Discussion:** An industry representative spoke in support of this item. The representative also recommended that the term “pump” be dropped from the language. A state official questioned whether checking the labeling on bulk tanks is the responsibility of weights and measures and whether this is an industry issue or weights and measures issue. A NIST Technical Advisor suggested giving consideration to mirroring this same language in the method of sale.
Committee Recommendations: The committee recommends this item be moved forward as informational and be reviewed by the FALS. The committee questions whether verification of brand is a weights and measures official’s duty. However, the committee recognizes that statement of brand is required on liquid measuring devices in HB44.

Attachment #10 V HB 133 - Chapter 4 Test Procedures for Seed Count Sections 4.2, 4.11 and 4.11.1.

Discussion: A county official gave a presentation discussing the issues and concerns affecting weights and measures officials with the recent passing of the seed proposal at the NCWM in July, 2010.

Committee Recommendations: The committee recommends this item be moved forward as a voting item.

Attachment #11 W HB 133 - Chapter 4 Insert Procedure to Determine Weight of Polyethylene

Discussion: A state official commented that input from manufacturers regarding “cut out” procedures they use for determining the square area has been taken into consideration for this item. The proposal also takes into account existing standardized procedures in place for other types of products such as chamois and firewood. Another state official stated that the drawing as outlined in appendix P3 will be inserted into the proposal.

Committee Recommendations: The committee recommends that this item be withdrawn. After review by the Committee and the submitter, it was agreed that the proposal has merit but should be withdrawn to allow time for further development.

Mr. Tim Lloyd, Montana, Chairman
Kirk Robinson, Washington
Mike Boitano, Amador County, CA
James Byers, San Diego County, CA
Arthur Fluharty, Washington
Pete O'Bryan, Associate Member, Foster Farms
Mr. David Sefcik, NIST Technical Advisor

Laws and Regulations Committee