Laws and Regulations (L&R) Committee
Interim Agenda

John Gaccione, Chairman
Westchester County, New York

Reference
Key Number

200 INTRODUCTION

The Laws and Regulations (L&R) Committee (Committee) will address the following items (Table A) at its Interim Meeting. All items are listed in Table A by Reference Key Number. The first three digits of an item's Reference Key Number are assigned from the Subject Series List below. The appendices to the report are listed in Table A under an appendix heading. The acronyms for organizations and technical terms used throughout the Agenda are identified in a glossary in Table B. The fact that an item may appear on the Agenda does not mean it will be presented to the National Conference on Weights and Measures (NCWM) for a vote; the Committee may withdraw some items, present some items for information and further study, issue interpretations, or make specific recommendations for changes to the publications identified below. The recommendations presented in this Agenda are statements of proposal and not necessarily recommendations of the Committee.

This Agenda contains recommendations to amend the National Institute of Standards and Technology (NIST) Handbook 130, (HB 130) "Uniform Laws and Regulations," (2011), and NIST Handbook 133, "Checking the Net Contents of Packaged Goods in the areas of Legal Metrology and Engine Fuel Quality," (2011). The "Item(s) Under Consideration" (formerly designated as "Recommendations") are statements of proposals and are not necessarily those of the Committee. Suggested revisions to the handbooks are shown in **bold face print** by ~~**striking out**~~ information to be deleted and **underlining** information to be added. Additions proposed for the handbooks are designated as such and are shown in **bold face print**. Proposals presented for information only are designated as such and are shown in *italic* type. The section mark, "§," may be used in some references in the text and is followed by the section number and title, (for example, Section 1.2. Weight).

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 and regional weights and measures associations have been printed in this publication as submitted. Therefore, the report may contain references to inch-pound units

Subject Series List

Table A
Index to Reference Key Items

Appendices

* The items in Appendix C are available on the NIST Weights and Measures Website at: http://www.nist.gov/pml/wmd/index.cfm under Publications/Pub 15 and at the NCWM website at: http:// www.ncwm.net.

Table B
Glossary of Acronyms and Terms

Acronym	Term	Acronym	Term
AOSA	Association of Official Seed Analyst	NCWM	National Conference on Weights & Measures
ASTM	American Society for Testing and Materials International	NIST	National Institute of Standards & Technology
CFR	Code of Federal Regulations	MLWG	Moisture Loss Work Group
CNG	Compressed Natural Gas	NEWMA	Northeastern Weights & Measures Association
CWMA	Central Weights & Measures Assn.	PDP	Principal Display Panel
FALS	Fuels and Lubricants Subcommittee	§	Section Symbol
FDA	Food and Drug Administration	SI	International System of Units
FD&C Act	Food Drug and Cosmetic Act	SWMA	Southern Weights & Measures Association
FPLA	Fair Packaging and Labeling Act	UPLR	Uniform Packaging and Labeling Regulation
FSS	Fuel Specifications Subcommittee	USDA	U.S. Department of Agriculture
FTC	Federal Trade Commission	USNWG	U.S. National Work Group
HB 130	NIST Handbook 130, *Uniform Laws and Regulations in the areas of Legal Metrology and Engine Fuel Quality*	WMD	NIST Weights & Measures Division
HB 133	NIST Handbook 133, *Checking the Net Content of Packaged Goods*	WWMA	Western Weights & Measures Association
L&R	Laws and Regulations		

Details of all Items
(In order by Reference Key Number)

231 UNIFORM PACKAGING AND LABELING REGULATION (UPLR)

231-1 HB130, Packaging and Labeling Requirements, Section 6, Declaration of Quantity: Consumer Products

Source: Northeastern Weights and Measures Association (NEWMA)

Purpose: To allow manufacturers to develop multilingual labels. This item would permit manufacturers to use approved symbols on consumer packages.

Item Under Consideration: Amend HB 130 Packaging and Labeling Regulations, Section 6: Declaration of Quantity: Consumer Packages, addition to 6.4.1. Combination Declaration:

Numerical Count

Numerical count can be expressed as either:

(a) alpha-numeric characters (Figure A); or

(b) alpha-numeric characters in conjunction with an approved symbol of the commodity from Section 6.7.1 (Figure B).

3 Razors
(Figure A)


(Figure B)

Amend HB 130 Packaging and Labeling Regulations, Section 6: Declaration of Quantity: Consumer Packages, Section 6.7.1., Symbols and Abbreviations (Figure C).


Disposable Razor
(Figure C)

Background/Discussion: A representative of Procter and Gamble (P&G) submitted a proposal at the 2009 NEWMA Interim Meeting held in Springfield, Massachusetts. This proposal is to amend the language in HB 130 Packaging and Labeling Regulation, Section 6 that will facilitate value comparisons for a diverse set of consumers. It is proposed to amend the net content declaration of content for consumer products labeled only with a count to allow for the use of approved symbols. According to P&G, this will limit the language of net content information, especially products with multi-language declarations, making the statement more noticeable to the eye. In addition, labels that are intended towards consumers whose first language is not English will benefit from knowing the content visually versus by text. P&G states that by ensuring the net content information is more noticeable; consumers will be more likely to make value comparisons.

P&G cites 21CFR 201.15 (c)(2); this requirement formally applies to over the counter drug products, but absent guidance for other categories of products subject to the Food Drug and Cosmetic Act (FD&C Act) and Food Packaging and Labeling Act (FPLA). This provides the best guidance principles for manufacturers to develop compliant multilingual labels. P&G states that net content translation and package size considerations can make a compliant statement difficult to understand.

Language extracted from 21 CFR 201.15:

> (c)(1) All words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear thereon in the English language: *Provided, however,* that in the case of articles distributed solely in the Commonwealth of Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be substituted for English.
>
> (2) If the label contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in the foreign language.

(3) If the labeling contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear on the labeling in the foreign language.

At the 2009 NEWMA Interim Meeting held October 12 - 15, 2009, in Springfield, Massachusetts, the NEWMA L&R Committee recommended this proposal be a Developing item.

At the 2010 NCWM Interim Meeting held in Nashville, Tennessee, Mr. Chris Guay, P&G, provided an explanation that in Europe products sold by count are using pictograms in the net content declaration and the package could be considered multi-language. This system would allow for industry to develop one package that can be used in several different countries without having to develop packaging for one specific language. An official urged that this be a Developing item to see if pictograms could be acceptable.

The Committee would like to see this item go through all the regions (NEWMA, CWMA, WWMA, and SWMA) for review and comment. The Committee requested from Mr. Guay an approved set of international pictograms and further information on the labeling requirements (FPLA). The NIST Technical Advisor will also research the pictograms for any conflicts with other Federal Laws and Regulations. The NIST Technical Advisor met with the Federal Trade Commission (FTC) on February 26, 2010, to seek their assistance in reviewing this proposal. The L&R Committee agreed that this should be a Developing item.

At the 2010 NEWMA Annual Meeting held in Groton, Connecticut, in May 2010, there were no comments heard on this item. The NEWMA L&R Committee agreed that this item should remain as a Developing item until further information is made available. The NIST Technical Advisor has not heard back from FTC regarding this issue

At the 2010 CWMA Annual Meeting held in Springfield, Illinois, in May 2010, an industry representative mentioned that there are several issues with this proposal: the Federal Drug Administration (FDA) will need to update labeling regulations, changing demographics, and international marketing of products requiring information in several languages. Regulations need to be put in place to either prohibit this practice or to establish guidelines and regulations. An inspector commented that the use of pictographs is currently in the marketplace, and it is considered a violation in their jurisdiction.

At the NCWM Annual Meeting held in St. Paul, Minnesota, on July 12 - 15, 2010, no comments were received on this item.

At the 2010 CWMA Interim Meeting held in Rock Island, Illinois, an industry representative provided an explanation that the use of pictographs is already appearing in the marketplace. Due to limited space restrictions on packages, pictographs are preferred over the use of multiple languages. It was commented that this is an acceptable practice in Europe, where several languages may be required on products. The CWMA L&R Committee recommends that the NCWM L&R seek further guidance from FDA and FTC and that this be an Informational item.

At the 2010 WWMA Annual Meeting held in Olympia, Washington, a manufacturer representative stated that several large manufacturers are currently using pictograms on packages. The representative is asking for guidance and language from the NCWM L&R as to the acceptable practice of using pictograms. A county and state official questioned how “acceptable” pictograms, if approved, would be controlled. Questions were raised on who would maintain, approve, and standardize these pictograms. They further stated that use of a pictogram should not replace current language for net quantity. The WWMA L&R Committee recommends that use of a pictogram be supplemental, if used, and not part of the net quantity statement. The WWMA L&R Committee would like to see additional information on the international use of pictograms. The WWMA L&R Committee recommends that this be a Developing item, in order for the NCWM L&R Committee to seek guidance from the FTC.

At the 2010 SWMA Annual Meeting held in Columbia, South Carolina, there were no comments heard during open hearings. The SWMA L&R Committee would like to see a database of approved pictographs and would also like to know who would be responsible for updating, maintaining, and disseminating this information to the states. The SWMA L&R Committee recommends that this item move forward as a Developing item.

At the 2010 NEWMA Interim Meeting held in Norwich, Connecticut, there were no comments heard on this item. The NEWMA L&R Committee recommends that this be a Developing item.

231-2 HB 130, Packaging and Labeling Requirements, 6.12. Supplementary Quantity Declarations and 6.14. Qualification of Declaration Prohibited.

Source: Central Weights and Measures Association (CWMA)

Purpose: Provide clearer language to help guide industry and state officials when. Federal agencies are inconsistent in their interpretations, and this proposal provides better guidance.

Item Under Consideration:

6.12. Supplementary Quantity Declarations. – The required quantity declaration may be supplemented by one or more declarations of weight, measure, or count, such declaration appearing other than on a principal display panel. Such supplemental statement of quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of commodity contained in the package (e.g., "giant" quart, "larger" liter, "full" gallon, "when packed," "minimum," **"equivalent," "lasts the same as,"** or words of similar import).

6.14. Qualification of Declaration Prohibited. – In no case shall any declaration of quantity be qualified by the addition of the words "when packed," "minimum," or "not less than**,**" **"equivalent," or "lasts the same as"** or any words of similar import (e.g., "approximately"), nor shall any unit of weight, measure, or count be qualified by any term (such as "jumbo," "giant," "full," or the like) that tends to exaggerate the amount of commodity.
(Amended 1998)

Background/Discussion: Manufacturers are using the terms "equivalent," "lasts the same as" to qualify net weight statements. Clearer language is needed provide consumers with better information. Industries and state officials need better guidance for product labeling. Currently FTC does not consider the terms "equivalent," or "lasts the same as" exaggerated or misleading.

At the 2010 CWMA Interim Meeting a state regulator presented an example of label (refer to Appendix A) that was perceived as mislabeled. It was agreed that no conflicting information regarding the net weight statement should be in the lower one-third of the principal display panel (PDP). The CWMA L&R Committee recommends that this move forward as a Voting item.

231-3 Packaging and Labeling Requirements, Section 9. Prominence and Placement: Non-Consumer Packages:

Source: Western Weights and Measures Association

Purpose: Modify HB 130 – UPLR, Section 9.2. Prominence and Placement: Non-consumer packages, add a minimum height requirement.

Item Under Consideration:

Section 9. Prominence and Placement: Non-consumer Packages

9.1. General. – All information required to appear on a non-consumer package shall be definitely and clearly stated thereon in the English language. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

9.2. Minimum Height of Numbers and Letters. - **The height of any letter or number in the quantity declaration on a non-consumer package shall not be less than that shown in Table 1 with respect to the area of the panel and the height of each number of a common fraction shall meet one-half the minimum**

height standards. When upper and lower case or all lowercase letters are used in SI symbols, it is the uppercase "L," lowercase "d," or their equivalent in the print or type that shall meet the minimum height requirement. However, no letter shall be less than 1.6 mm ($^1/_{16}$ in) in height. Other letters and exponents must be presented in the same type style and in proportion to the type size used.

Background/Discussion: At the 2010 WWMA Annual Meeting a county weights and measures official commented that same requirement for consumer and non-consumer package should exist. They have found quantity declarations on non-consumer packages that were in a font size that was so small, it was easily missed. By requiring a minimum font size for the quantity declaration on these packages weights and measures officials will have an easier time being able to evaluate labels for FPLA requirements and follow-up on short measure packages.

The NIST Technical Advisor noted that under the FPLA and U.S. Department of Agriculture (USDA) regulations, there are no minimum height requirements for non-consumer packages this proposal raises the potential for conflict, which may result in federal preemption. It was also noted that defining the term "definitely and clearly stated" by a qualifying statement that it be a minimum 1.6 mm ($^1/_{16}$ in) in height could nullify its meaning. It was further mentioned that the term "definitely and clearly stated" affects free area, style of type or lettering, minimum height of letters and numbers, and proportion of numbers and letters for non-consumer packages. The WWMA L&R Committee recommends that this item move forward as a Voting item.

231-4 HB 130, Packaging and Labeling Requirements, 10.4 Multi-unit Packages.

Source: Central Weights and Measures and Procter and Gamble

Purpose: Provide specific language and more than one way in defining the labeled net contents for multi-packs.

Item Under Consideration:

10.4. Multi-unit Packages. [***NOTE 7***, page 78] – Any package containing more than one individual "commodity in package form" (see Section 2.1. Package) of the same commodity shall bear on the outside of the package a declaration of:

(a) the number of individual units;

(b) the quantity of each individual unit; and

(c) the total quantity of the contents of the multi-unit package.

Example:

Soap bars, 6 Bars, Net Wt 100 g (3.53 oz) each
Total Net Wt 600 g (1.32 lb).

The term "total" or the phrase "total contents" may precede the quantity declaration.

A multi-unit package containing unlabeled individual packages which are not intended for retail sale separate from the multi-unit package may contain, in lieu of the requirements of section (a), a declaration of quantity of contents expressing the total quantity of the multi-unit package without regard for inner packaging. For such multi-unit packages it shall be optional to include a statement of the number of individual packages when such a statement is not otherwise required by the regulations.

Examples:

Deodorant Cakes:
5 Cakes, Net Wt 113 g (4 oz) each, Total Net Wt 566 g (1.25 lb); or
5 Cakes, Total Net Wt 566 g (1 lb 4 oz)

Soap Packets:
10 Packets, Net Wt 56.6 g (2 oz) each, Total Net Wt 566 g (1.25 lb); or Net Wt 566 g (1 lb 4 oz); or
10 Packets, Total Net Wt 566 g (1 lb 4 oz)

(Amended 1993)

(d) The net content statement for a multi-unit package may have either metric or inch pounds appear first. Since the secondary unit on the primary package is often a rounded value, the difference between primary and secondary declaration is multiplied by the number of individual units in the multi-unit package. Multi-unit product net content declarations may either multiply both primary and secondary units by the number of units in the multi-unit package or multiply the primary declarations by the number of units and convert (and round) this quantity.

(Added 201X)

NOTE 7: *For foods, a "multi-unit" package means a package containing two or more individually packaged units of the identical commodity in the same quantity, intended to be sold as part of the multi-unit package but labeled to be individually sold in full compliance with this regulation. Open multi-unit retail food packages under the authority of the Food and Drug Administration or the U.S. Department of Agriculture that do not obscure the number of units or prevent examination of the labeling on each of the individual units are not required to declare the number of individual units or the total quantity of contents of the multi-unit package if the labeling of each individual unit complies with requirements so that it is capable of being sold individually. (See also Section 11.11. Soft Drink Bottles and Section 11.12. Multi-Unit Soft-Drink Bottles.)*
(Added 1984)

Background/Discussion: This proposal was submitted by Mr. Guay with P&G. Mr. Guay is requesting a valid way for defining the labeled net contents for a multi-pack (multiples of the same product, packaged together). One approach allows for the inch-pound units and metric units from a single package to be multiplied by the number of packages within the multi-pack. Multiplying both values by the number of units compounds the rounding error of a single package. This would cause the content/weight statement to be inaccurate. However, this would be a consumer friendly approach.

The second approach would allow the first declaration (either inch-pound units or metric units) from a single package to be multiplied by the number of packages in the multi-pack and the primary value is converted to the secondary unit. This approach is more accurate than the first approach.

Example of the net contents for 15 pack of Tide:

15 x 1.2 L =18.0 L =18000 mL
15 x 40 FL OZ = 600 FL OZ
18 L (600 FL OZ)

Or

18000 mL x 1 FL OZ divided by 29.5735 mL = 608.653 FL OZ
18 L (608 FL OZ)

Compare the two: 18 L (608 FL OZ) vs. 18 L (600 FL OZ)

At the 2010 CWMA Interim Meeting, the submitter of this proposal submitted the language in the section "Item under Consideration." He mentioned that they are being fined in some states for labeling issues. The CWMA L&R Committee recommends that the language submitted be considered by the NCWM L&R Committee.

At the 2010 WWMA Annual Meeting, 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 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. The WWMA L&R Committee agrees that this is clearly permitted based on Section 6.13 of the UPLR, "Rounding" that states "in no case shall rounded net content declarations overstate a quantity; the packer may round converted values down to avoid overstating the net contents." The WWMA L&R Committee recommends that this item be Withdrawn.

At the 2010 SWMA Annual Meeting and the 2010 NEWMA Interim Meeting, both of these member states voted to recommend that this item be Withdrawn because existing guidance in Section 6.13 of the UPLR is deemed sufficient to address the issue raised.

232 METHOD OF SALE REGULATION

232-1 HB 130, Method of Sale Regulation Section 2.13.4. "Declaration of Weight"

Source: Western Weights and Measures Association (WWMA)

Purpose: Update HB 130, Section 2.13.4. to provide new density values for heavier density plastics that are currently in the marketplace.

Item under Consideration: Amend HB 130, Method of Sale Regulation, Section 2.13.4. as follows:

2.13.4. Declaration of Weight. – The labeled statement of weight for polyethylene sheeting and film products under Sections 2.13.1.1. Sheeting and film, and 2.13.3.1. Bags, shall be equal to or greater than the weight calculated by using the formula below. The final value shall be calculated to four digits, and declared to three digits, dropping the final digit as calculated (for example, if the calculated value is 2.078 lb, then the declared net weight shall be 2.07 lb).

For SI dimensions:

M = T x A x D/1000, where:

M = net mass in kilograms
T = nominal thickness in centimeters
A = nominal length in centimeters times nominal width [***NOTE 6***, page 122] in centimeters
D = density in grams per cubic centimeter as determined by ASTM Standard D1505 68, Standard Method of Test for Density of Plastics by the Density Gradient Technique (or latest issue)

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 polyethylene products (LLPD) and products other than high density (HDPE)** shall be 0.92 g/cm^3 ~~**(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/cm^3.

For inch-pound dimensions:

W = T x A x 0.03613 x D, where:

W = net weight in pounds;
T = nominal thickness in inches;
A = nominal length in inches times nominal width [***NOTE 6***, page 122] in inches;

D = density in grams per cubic centimeter as determined by ASTM Standard D1505 68, Standard Method of Test for Density of Plastics by the Density Gradient Technique (or latest issue); and 0.03613 is a factor for converting g/cm^3 to lb/in^3.

~~**For the purpose of this regulation, the minimum density shall be 0.92 g/cm^3.**~~

(Added 1977) (Amended 1980, 1982, 1987, 1989, 1990, ~~**and**~~ 1993**, and 201X**)

NOTE 6: *The nominal width for bags in this calculation is twice the labeled width.*

Background/Discussion: It was stated at the 2009 WWMA Annual Meeting in Los Cruces, New Mexico, that manufacturers and distributors of polyethylene bags are using the calculated target weight identified in HB 130 Section 2.13.4. to understate the net quantity of their labels. The polyethylene industry recognizes a density value of 0.92 g/cm³ for linear low density polyethylene (LLDP) products. When 0.92 g/cm³ is used to calculate the target net weight of high density polyethylene (HDPE), the product may make the target net weight. However, when the appropriate density value of 0.95 g/cm³ is used to test HDPE, the product often fails to meet the calculated target net weight. Further testing reveals than one or more of the labeled width, thickness, or count statements are inaccurate. It appears that some manufacturers are aware that weights and measures officials are restricted to testing HDPE product using the 0.92 g/cm³ value because the actual density value is not stated on the product label. Existing procedural guidelines do not address HDPE materials. When testing at manufacturing locations, weights and measures officials are able to obtain information regarding the density of the product directly from the manufacturer. However, at distributor locations density information is not available and officials must test using the 0.92 g/cm³ value designated in HB 130 and HB 133 to verify the weight of the product. When the product has no net weight statement on the package, 0.92 g/cm³ is the only factor that the inspector may use to calculate the target net weight.

The 2009 WWMA Association supports the following item and recommends that it be a Voting item:

2.13.4. Declaration of Weight. – The labeled statement …

~~**For the purpose of this regulation, the minimum density shall be 0.92 g/cm³ (when D is not known).**~~
~~**For the purpose of this regulation, the minimum density shall be 0.92 g/cm³.**~~

Amend Section 2.13.4. Declaration of Weight as follows:

For the purpose of this regulation, **when D is not known,** the minimum density **(D) used to calculate the target net weigh for linear low 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, the minimum density (D) used to calculate the target net weight shall be 0.95 g/cm³.**

The NEWMA L&R Committee reviewed this item at its 2009 Interim Meeting and recommends that this proposal be a Developing item.

At the 2010 NCWM Interim Meeting held in Nashville, Tennessee, the Committee heard support for the density factor changing from 0.92 g/cm³ to 0.95 g/cm³ on this item. A California county commissioner indicated that the information provided by the WWMA was data extracted from Internet searches. Manufacturers are complaining that under current practice they cannot compete fairly.

Mr. Jackelen from Berry Plastics urged the Committee to reject this proposal. Mr. Jackelen stated that 0.92g/cm³ density currently works for manufacturers and that changing it to 0.95 g/cm³ will cause undue cost and waste. Most manufacturers do not make high density (HD) bags, but are producing blends. According to Mr. Jackelen, another reason to reject the proposal is if the 0.95 g/cm³ bag is punctured, it continues to tear.

A state official commented that if you use the term HD, then you are bound by the 0.95 g/cm³. If you use the length x width x thickness to determine the net weight, then density value needs to be added on the package labeling. A state official said that manufacturers should consider disclosing the density factor on every product as part of the labeling. It was voiced that if there are questions about an absolute 0.95 g/cm³ density, then there should be an alternative.

Another state official commented that the 0.95 g/cm³ will be factored in only when the density is not known. The Committee received letters that were reviewed on this item. The Committee recommended moving the item under consideration forward as a Voting item.

At the 2010 NEWMA Annual Meeting in Groton, Connecticut, there was concern that there appears to be a lack of data on this item. It was never reviewed by all regions and also not presented to industry to seek comments. The NEWMA L&R Committee felt that this item was not an emergency and would like to review comments received from all the regions and industry.

At the 2010 CWMA Annual Meeting in Springfield, Illinois, the CWMA L&R Committee heard no comments on this item and recommends moving it forward as a Voting item.

At the 2010 NCWM National Meeting in St. Paul, Minnesota, the Committee heard from Mr. Jackelen (refer to Appendix B) who opposed this item and requested that it be withdrawn. Mr. Jackelen believes this proposal will have a detrimental effect because can liners are made of natural gas and oil and the cost of these two items are increasing. Currently, the 0.92 g/cm³ is an established practice in industry and the marketplace and is used to set the bottom weight Changing this density will cause confusion. Mr. Jackelen clarified that high density (HD) does not mean it is a better density. There are other linear bags that have higher quality than HD. As far as sustainability, if 0.95 g/cm³ is the established requirement it will cause an additional 12 million pounds of trash to be generated

An official countered that the intent of this proposal is to provide the inspectors with information. There is fraud in the marketplace on these types of items and additional information is warranted. A director recommends that a minor amendment be done to the item under consideration and insert "for products labeled HD when the D is not on the package label use 0.95 g/cm³. Also use a similar statement "if the packer or manufacturer does not disclose the density then use 0.95 g/cm³." The director pointed out that it is not the role of the conference to address quality issues, but to have a level playing field for inspectors to test a product. Another official remarked that companies need to identify their product on the container, and inspectors will use what density is disclosed.

The Committee received one letter asking for the withdrawal of this proposal and California submitted material safety data sheets from several companies (refer to Appendix B). The Committee considered comments received and agreed that more work was needed so the item was changed to Informational status.

At the 2010 CWMA Interim Meeting, there were no comments heard on this item. The CWMA L&R Committee recommends that this item remain Informational.

At the 2010 WWMA Annual Meeting, 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 a portion of language within the item under consideration. Two county officials spoke in support of the amended item, which would assist weights and measures officials in the field. A county official submitted a letter of support. The WWMA L&R Committee recommends that the amended language move forward as a Voting item. The WWMA L&R Committee also recommends that additional language be inserted for SI dimensions.

Amend Section 2.13.4. Declaration of Weight as follows:

> For the purpose of this regulation, **when D is not labeled on the package,** ~~**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 which does 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.**

At the 2010 SWMA Annual Meeting held in Columbia, South Carolina, there were no comments heard on this item. The SWMA L&R Committee would like to seek additional comments from industry, other than material safety data sheets (refer to Appendix A in this report). The SWMA L&R Committee recommends that this item move forward as an Informational item.

At the 2010 NEWMA Interim Meeting held in Norwich, Connecticut they noted that this proposal is confusing and that additional work needs to be done to clarify the impact of the proposed changes on manufacturers and consumers. The NEWMA L&R Committee recommends this move forward as a Developing item.

232-2 HB 130, Uniform Regulation for Method of Sale of Commodities – Packaged Printer Ink and Toner Cartridges

Source: Southern Weights and Measures Association (SWMA)

Purpose: This proposal is to clarify the requirements for industry, consumers and weights and measures officials.

Item Under Consideration:

2.XX. Printer Ink and Toner Cartridges Labeling.

2.XX.1 Definitions.

2.XX.1.1. Printer ink cartridges – Any cartridge or module that contains ink or a similar substance in liquid form employed in the printing of documents, papers, pictures, etc., that is used in a printing device and designed to be replaced when no longer able to supply its contents in printing.

2.XX.1.2. Toner cartridges – Any cartridge or module that contains toner, powder, or similar non-liquid substance employed in the copying or printing of documents, papers, pictures, etc. that is used in a copying device and designed to be replaced when no longer able to supply its contents in printing and/or copying.

2.XX.2. Method of Sale and Labeling.

2.XX.2.1. Method of sale, printer ink cartridges. – All printer ink cartridges kept, offered, or exposed for sale or sold shall be sold in terms of the count of such cartridges and the fluid volume of ink in each cartridge stated in terms of milliliters or fluid ounces.

2.XX.2.2. Method of Sale, toner cartridges. – All toner cartridges kept, offered, or exposed for sale or sold shall be sold in terms of the count of such cartridges and the net weight of toner substance.

(Added 201X)

Background/Discussion: Over the past several years, there has been a change in the marketplace on inkjet and toner cartridges net content statements. Currently, there is little uniformity in the marketplace on this item, and the Committee is seeing some labels with a net content or with only a page yield count (e.g., prints 1000 pages). The NIST Weights and Measures Division (WMD) pointed out that according to guidelines printed in HB 130 from the Weights and Measures Law, Section 19 "information required on packages," these products are required to have the net contents of the ink (and toner) labeled, but manufacturers have resisted, claiming an exemption under the FPLA. The purpose of this proposal is to specifically clarify the requirements for industry, consumers, and weights and measures officials.

At the 2009 SWMA Annual Meeting in Clearwater, Florida, a Lexmark representative commented that they do not believe that a net content statement should be required, and that a page yield is sufficient. He read the main points of a letter from Lexmark to Mr. Max Gray, Director of Florida Agriculture and Consumer Services, dated March 17, 2009. The main points within the letter were: 1) the ink associated with a cartridge is a small fraction of the total cost of the print cartridge mechanism; 2) a page yield can provide a meaningful comparison to a consumer if all manufacturers employ the same estimating assumptions and techniques; and 3) International Organization for Standardization (ISO) studied this issue for years and has rejected reliance on ink volume or quantity; instead ISO has developed a yield estimating and claiming methodology that permits cartridges to be compared using a consistent yardstick. Unlike ink volume measurements, page yield measurements provide a consumer with a

reliable way to compare the amount of printing that can be expected. Lexmark also stated that ink is expressly exempt from labeling as provided by the FPLA 16 CFR 503.2(a).

An industry representative believes this issue does need to be discussed and reviewed further. However, many officials believe that consumers should know what they are getting. If it is determined that page count is the quantity statement, then the page print standard should be reviewed and have tighter standards. Mr. Gray felt that more data is needed from manufacturers on this issue.

The SWMA L&R Committee recommends the item for consideration for Developing by the NCWM L&R Committee.

At the 2010 Interim Meeting held in Nashville, Tennessee, the Committee heard testimony from Mr. Matthew Barkley, Hewlett Packard, regarding how the FPLA creates an exemption for ink which extends to toner and ink cartridges. A declaration of weight and volume are not the best way for consumers to make value comparisons. Customers benefit from page count/yield. Mr. Barkely urges that this issue be withdrawn. If this issue is to proceed, it should be Informational and a review of the FPLA exemption needs to be reviewed. Page yield is widely accepted and has repeatability measures.

Mr. Paul Jeran, Hewlett Packard, submitted a white paper (refer to Appendix C) from the Information Technology Industry Council (ITI). This white paper included manufacturers from Epson, Hewlett Packard, Kodak, and Lexmark. Mr. Jeran explained that his background is with ink and toner measurement. For the same volume of ink, two different systems of the same model cartridge from two different vendors can print a different number of pages. In order to determine the page yield, they are using the ISO/IEC methodology. ISO is currently working on a photo yield standard.

A state official expressed concerns with page yield being the standard page print for quantity. There is variation based on the type of cartridge, printer, and font and if graphics/photos are being printed. There is also a concern with what ink cartridge refillers are doing. The Florida official reviewed the current practice of refillers, and they are listing on the labels the amount of ink. There are many manufactured packages in the marketplace, so value comparison to original equipment manufacturer (OEM) is critical. This is an expensive commodity and clarifications of the requirements are needed. A state official recommended that this item not be withdrawn, but made Informational so additional information can be researched on this item. It is firmly believed that there needs to be a consistency with the declaration statement on these types of items. A consumer stated that he believes the net content needs to be stated with voluntary supplemental information for page yield. Some voiced their opinion that consumers need to know page yield in order to make a value comparison. The NIST Technical Advisor stated that under the FTC regulations ink and toner cartridges were not part of the CFR. NIST met with the FTC on February 26, 2010, to request clarification of the exemption. According to the Committee, there needs to be a test procedure for verification of net content developed for ink and toner cartridges. The Committee recommends that this item be made Informational until they can receive clarification from the FTC, review ISO standards, and determine what refillers' current practices are.

At the 2010 NEWMA and the CWMA Annual Meetings, both Associations received a presentation from Mr. Stephen Pociask from American Consumer Institute, regarding a lack of consumer information when purchasing computer printers and cartridges. Both Associations expressed that there are still many unanswered questions and would like to hear from manufacturers of ink and toner cartridges. Both Associations are recommending that this be an Informational item.

At the 2010 Annual Meeting held in St. Paul, Minnesota, Mr. Pociask, presented a study done by his organization. It was asked who initially requested the study and who funded it. Mr. Pociask stated that the study was done back in 2007, with funding by a telemarketing research company.

A Weights and Measures Official expressed concern that the study presented was not clear; is page count based on certain fill levels or declaring the weight on the cartridge itself? Mr. Pociask responded that currently Quality Logic uses the ISO standards. He also concluded that net weight is easy to enforce. Mr. Pociask stressed that his focus is to provide information that give consumers useful information in purchasing printers and the life cost of the printer, including printer ink cost.

Another official stated that the study was interesting, but would like to hear from manufacturers. There are several issues; cartridges are only for specific printers, when comparing price per page you suggest that price is static, and ink cartridge refillers need to be addressed.

Mr. Joshua Rosenberg, IT Industry Council (ITI), agreed that providing consumers with information is meaningful, however; relevant to the consumer is the number of pages that can print. The ISO standards are a good tool, but will lead to customer confusion. Mr. Rosenberg expressed that there is a lot more that needs to be discussed on this issue (refer to Appendix C).

At the 2010 Annual Meeting, the Board of Directors established a Task Group for the Printer Ink and Toner Cartridges to review and obtain additional information from all stakeholders. Ms. Vicky L. Dempsey, Chief Inspector, Montgomery County, Ohio will Chair this group and Lisa Warfield will be the NIST Technical Advisor.

At the 2010 CWMA Interim Meeting, Ms. Dempsey, Chairperson for the Task Group on Printer Ink and Toner Cartridges announced her resignation to the Association. Ms. Dempsey gave a briefing on this issue, in particular whether this particular form of ink is included in the exemption of the FPLA. It was indicated that FDA believes this exemption only applies to ink in pens, not in printer cartridges. Regulators commented that "yield' is more important for cost comparison for consumers; however, other regulators felt that "yield" is not a weights and measures issue. Another concern was that the ISO yields are based upon approximations. Discussion also included whether regulators would have to purchase printers in order to verify yield. It was generally agreed that this is a very complicated matter, and the method of sale needs to be measurable. A regulator stated he had spoken with a manufacturer and questioned how the packages are filled. The response indicated that packages are filled by volume.

The CWMA L&R Committee supports the efforts of a Task Group for the Printer Ink and Toner Cartridges to gather more information for development of this proposal.

At the 2010 WWMA Annual Meeting and the 2010 NEWMA Interim Meeting, it was announced that NCWM is seeking a chairperson for the Printer Ink and Toner Cartridges Task Group. The CWMA and WWMA are recommending that this item move forward as Informational.

At the 2010 SWMA Annual Meeting, it was announced that a chairperson is needed for the Task Group on Printer Ink and Toner Cartridges. The SWMA L&R Committee does not endorse the formation of an Ink and Toner Task Group to resolve this issue. Only within the past couple years have manufacturers changed their declaration statement to read "yield." Allowing the declaration by yield will open the door for other commodities to change their labeling (e.g., loads of laundry). The SWMA L&R Committee recommends that these commodities be sold by volume and weight; however, they are not opposed to yield being a supplementary statement. This will allow for inspectors to verify the net contents, and also provide information for consumers to make value comparisons. The SWMA L&R Committee would like to seek additional information from industry and ink refillers. A recommendation was made that the item under consideration move forward as a Voting item.

Ms. Maureen Henzler, Kansas, is the Chairperson for the Task Group on Printer Ink and Toner Cartridges. If you are interested in participating in this task group e-mail Ms. Henzler at maureen.henzler@kda.ks.gov.

232-3 HB 130, Pelletized Ice

Source: NIST Weights and Measures Division, International Dairy Foods Association, Food and Drug Administration (FDA)

Purpose: Provide a method of sale for pelletized frozen desserts in accordance with FDA's August 2010 statement.

Item Under Consideration:

1.7.1. Factory Packaged Ice Cream and Similar Frozen Products. – Ice cream, ice milk, frozen yogurt, and similar products shall be kept, offered, or exposed for sale or sold in terms of fluid volume.

(Amended 1995)

1.7.2. Pelletized Ice Cream <u>and Similar Pelletized Frozen Desserts –</u> A semi-solid food product manufactured at very low temperatures using a nitrogen process and consisting of small beads of varying sizes. Bits of inclusions (cookies, candy, etc.) that also vary in size and weight may be mixed with the pellets.

1.7.2.1. Method of Retail Sale – Packaged pelletized ice cream **<u>or similar pelletized frozen desserts</u>** shall be kept, offered, or exposed for sale on the basis of net weight.

(**Note:** The method of sale for pelletized ice cream shall be enforceable after April 17, 2010**<u>, and after August 2, 2011, for similar pelletized frozen desserts)</u>**

(Added 2010) **(Amended 20XX)**

Background/ Discussion: In a letter from the FDA (refer to Appendix D), a statement was issued that the net quantity of content statement on pelletized frozen desserts, in addition to pelletized ice cream, conform to the standards for frozen desserts in 21 CFR Part 135. Nonstandardized frozen desserts that are similar to the standardized frozen desserts in 21 CFR Part 135 should be declared in terms of net weight. The FDA expects manufacturers of these pelletized frozen desserts to revise their labels to reflect a net weight declaration during the next package printing cycle and encouragea all marketers of pelletized frozen desserts to modify their labels with a net weight declaration within one year from the issue date (August 2011).

At the 2010 fall regional meetings, there were no comments heard on this item. All four Associations have recommended that this item move forward as a Voting item.

237 ENGINE FUELS AND AUTOMOTIVE LUBRICANTS REGULATION

237-1 HB 130, Engine Fuel Quality Requirements for Hydrogen

Source: Western Weights and Measures Association (WWMA)

Purpose: Adopt engine fuel quality requirements for hydrogen in HB 130 to address gaseous hydrogen refueling applications.

Item Under Consideration: The U.S. National Work Group (USNWG) Fuel Specifications Subcommittee (FSS) presented the following recommendation for consideration.

Specification for Hydrogen Fuel: The FSS identified several quality criteria where there was tentative agreement with their associated values (see properties 6, 7, 8, 9, 12, 14, and 16 which are highlighted in green) in the proposed Table 1. Hydrogen Fuel Quality Specification. When a quality property and numerical value (defining a maximum or minimum limit) is added to the specification, appropriate test methods must then be identified. As test methods are identified and adopted by the FSS, they will be added to column 6 (test methods) in Table 1. The FSS did not agree on all of the properties contained in the DMS proposal because there was either not enough research data or test methods available to support a decision (see properties 1, 2, 3, 4, 5, 10, 11, 13, and 15 which are highlighted in yellow) in Table 1 below. These and perhaps other properties will receive further consideration by the FSS and may be added to the quality standard in the future when such action is supported by research.

In April 2009, at the U.S. National Hydrogen Work Group (USNHWG) meeting held in Sacramento, California, they further refined the definitions for hydrogen vehicle fuel based on input from SAE International. The definitions were modified to include more technically correct language and the text is in alignment with the widely recognized "Bosch Automotive Handbook." In January 2010, a column was added to Table 1 to reflect the responsible standards committee and the status of the test method.

Table 1. Hydrogen Fuel Quality Specification*						
Property		**Value**	**Unit**	**Limit**	**Test Method(s)**	**Responsible Stds. Committee and Status of test method**
1	Ammonia	0.1	ppm v/v	Maximum	to be specified	WK 10196 under ASTM D03.14
2	Carbon Dioxide	2.0	ppm v/v	Maximum	to be specified	WK 10196 and WK 4548 under ASTM D03.14
3	Carbon Monoxide	0.2	ppm v/v	Maximum	to be specified	WK 10196 under ASTM D03.14
4	Formaldehyde	0.01	ppm v/v	Maximum	to be specified	WK 10196 under ASTM D03.14
5	Formic Acid	0.2	ppm v/v	Maximum	ASTM D7550-09	WK 10196 under ASTM D03.14
6	Helium	300.0	ppm v/v	Maximum	to be specified	ASTM D03.14
7	Hydrogen Fuel Index	99.97	% (a)	Minimum	to be specified	
8	Nitrogen and Argon	100.0	ppm v/v	Maximum	to be specified	WK 4548 under ASTM D03.14
9	Oxygen	5.0	ppm v/v	Maximum	to be specified	WK 4548 under ASTM D03.14
10	Particulate Concentration	1.0	mg/kg	Maximum	to be specified	WK 9688 and WK 21611 under ASTM D03.14
11	Total Allowable Non-Hydrogen, Non-Helium, Non-Particulate constituents	100.0	ppm v/v	Maximum	to be specified	
12	Total Non-Hydrogen Gases	300.0	ppm v/v (b)	Maximum	to be specified	
13	Total Halogenated Compounds	0.05	ppm v/v	Maximum	to be specified	WK 23815 under ASTM D03.14
14	Total Hydrocarbons	2.0	ppm v/v (c)	Maximum	to be specified	WK 22378 under ASTM D03.14
15	Total Sulfur Compounds	0.004	ppm v/v	Maximum	to be specified	WK 24073 under ASTM D03.14
16	Water	5.0	ppm v/v	Maximum	to be specified	WK 10196 and WK 4548 under ASTM D03.14

Footnotes to Table 1 –

a. Hydrogen fuel index is the value obtained with the value of total gases (%) subtracted from 100 %.
b. Total Gases = Sum of all impurities listed on the table except particulates.
c. Total Hydrocarbons may exceed 2 ppm v/v only due to the presence of methane, provided that the total gases do not exceed 300 ppm v/v.

* The FTC's Fuel Rating Rule (16 CFR Part 309) see the requirements in "Labeling of Alternative Fuels" at http://www.ftc.gov/bcp/edu/pubs/business/autos/bus29.shtm requires dispensers to bear an declaration of minimum percent of hydrogen determined according to test methods described in "Standard Test Method for Analysis of Natural Gas by Gas Chromatography (ASTM D1946)

Updated 1/20/2010

Background/Discussion: Twenty-four states have hydrogen refueling dispensers in operation. Hydrogen stations using permanent and mobile refueling systems for automobiles, fleet vehicles (buses), forklifts, and airport totes are increasing and may go unnoticed. Many stakeholders who are not familiar with the weights and measures standards process will need to participate at this stage rather than after this is a commercial application. This effort by the

USNWG for the Development of Commercial Hydrogen Measurement Standards is to ensure there are appropriate standards and test procedures in place in time for dispenser manufacturers, service agencies, and officials to educate the general public, not if, but when retail hydrogen applications become commercially available.

Existing codes do not fully address hydrogen refueling applications because of hydrogen's properties and other technical differences in the setup and operations of dispensing systems. The development of legal metrology standards for newly emerging hydrogen technology is a necessary component of the hydrogen infrastructure. The weights and measures community must have time to consider requirements for hydrogen-refueling systems before this application is available for public access at corner service stations.

The USNWG is bringing the proposal before the weights and measures community to share this information about upcoming standards for an emerging technology. The simultaneous development of the code and corresponding test procedures will allow for input from the weights and measures and hydrogen communities, appropriate trials of the standards, and to address all areas of concerns early in the standards development process.

This item was reviewed at the WWMA and SWMA 2008 Annual Meetings and at the NEWMA 2008 Interim Meeting. NEWMA members generally discussed the "hydrogen issue" and its usage in the marketplace. It is anticipated that hydrogen at first will be relegated to "fleet vehicles" (such as compressed natural gas [CNG]), and that retail sales will be slow in coming to the marketplace. These Associations are recommending this item remain a Developing item.

At the 2009 Interim and Annual Meetings, the NIST Technical Advisor briefed the Committee on work that the USNWG FSS has done to date (refer to Appendix J in the "Report of the 94th NCWM" [SP 1099, 2009]).

There were no comments heard on this proposal at the CWMA 2009 Interim Meeting.

At the WWMA 2009 Annual Meeting held in Los Cruces, New Mexico, industry representatives acknowledged that some details of the specifications for fuel standards are in development. The WWMA L&R Committee believes it is best to be proactive on this item so that Hydrogen stations can be ready to make retail sales.

At the SWMA 2009 Annual Meeting, a state recommended that as the test methods are developed they get published. It also requested that documentation be produced on the effects of hydrogen if they exceed certain property values listed in the table "Hydrogen Fuel Quality Specification," and why this is important in the testing of hydrogen.

NEWMA reviewed this proposal at their 2009 Interim Meeting and recommends leaving this as a Developing item.

At the NCWM 2010 Interim Meeting, the NIST Technical Advisor provided an updated Table 1. Hydrogen Fuel Quality Specification (refer to L&R Appendix B in the "Report of the 95th NCWM" [SP 1115, 2010]) that amends the chart to identify which Standards Committee is actively working on the test method under development.

At the 2010 NEWMA and CWMA Annual Meeting, no comments were received on this item and both Associations are recommending that this item move forward as an Informational item.

At the 2010 NCWM Annual Meeting in St. Paul, Minnesota, Mr. Jennings, Tennessee, informed the Conference that the American Society for Testing and Materials International (ASTM) is actively working on a hydrogen specification. Until further developed by ASTM, there is nothing that can be done on this item. Mr. Jennings would also like to provide users with information on what the significance is of each property.

At the 2010 CWMA Interim Meeting in Rock Island, Illinois, a representative of the USNHWG provided an update on ASTM efforts to establish test methods. An industry representative provided information that some of the specifications of the SAE standard contained parameters that could not be measured by the current test methods. A ballot cannot take place at ASTM until these test methods are established, and test methods will take some time to develop. The CWMA L&R Committee recommends that the proposal be further developed by the Fuels and Lubricants Subcommittee due to their expertise in this area.

At the 2010 WWMA Annual Meeting held in Olympia, Washington, a state official, who is also a member of the 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. The state official commented that work has been done by the USNHWG on definitions and that moving this to a vote would help move the implementation and acceptance of hydrogen. It was stated that "specifications" could take years to develop. The WWMA L&R Committee agreed with the recommendation in having the definitions as a separate item (refer to Item 237-2). The WWMA L&R Committee recommends that this item remain Informational.

At the 2010 SWMA Annual Meeting, the NIST Technical Advisor informed the group that the WWMA recommended to separate the fuel specifications from the definitions. The SWMA L&R Committee was in agreed to separate these two items. The SWMA L&R Committee recommends moving this item forward as an Informational item.

At the 2010 NEWMA Interim Meeting, there were no comments heard on this item. The NEWMA L&R Committee recommends moving forward the fuel specification portion as an Informational item. The NEWMA's L&R recommendation for the definitions is documented in Item 237-2.

Additional information on this hydrogen proposal and the corresponding hydrogen gas measuring devices code can be found at website: http://www.nist.gov/pml/wmd/lmdg/hydrogen.cfm. For additional information on this item, contact Ms. Lisa Warfield at lisa.warfield@nist.gov or (301) 975-3308.

237-2 HB 130, Definitions for Hydrogen Fuel for Internal Combustion Engines and Fuel Cell Vehicles

Source: Western Weights and Measures Association (WWMA). This item was previously within Item 237-1.

Purpose: Adopt definitions for hydrogen fuel for internal combustion engines and fuel cell vehicles.

Item Under Consideration: The U.S. National Work Group (USNWG) Fuel Specifications Subcommittee (FSS) presented the following recommended definitions for consideration.

FSS supports the proposed new definitions to address gaseous hydrogen refueling applications.

1. Specification for Hydrogen Fuel for Internal Combustion Engines and Fuel Cells

2. Definitions

1.XX. Fuel Cell. – An electrochemical energy conversion device ~~used to convert hydrogen and oxygen into electrical~~ in which fuel and an oxidant react to generate energy without consumption of its electrodes or electrolytes ~~to power a motor vehicle~~.
(Added 201X)

1.XX. Hydrogen Fuel. – A fuel composed of the chemical hydrogen intended for consumption in a surface vehicle with an internal combustion engine or fuel cell.
(Added 201X)

1.XX. Internal Combustion Engine. – A device used to ~~ignite hydrogen in a confined space to create mechanical~~ generate power by converting chemical energy bound in the fuel into mechanical work to power a ~~motor~~ vehicle.
(Added 201X)

Background/Discussion: This item was reviewed at all the fall regional meetings under Item 237-1. At the 2010 WWMA and SWMA Annual Meeting and the 2010 NEWMA Interim Meeting, the Associations made the recommendation to have the definitions for hydrogen fuel for internal combustion engines and fuel cell vehicles considered as a separate item. All of the Associations are recommending this item move forward as a Voting item.

237-3 Engine Fuels and Automotive Lubricants Regulation, Section 3.15. Biodiesel and Biodiesel Blends

Source: Southern Weights and Measures Association (SWMA)

Purpose: Amend Section 3.15. Biodiesel and Biodiesel Blends of the Engine Fuels and Automotive Lubricants Regulation to remove the exemption for declaration of biodiesel content on product transfer documents for biodiesel blends up to 5 %.

Item Under Consideration: Amend Section 3.15. Biodiesel and Biodiesel Blends of the Engine Fuels and Automotive Lubricants Regulation.

3.15. Biodiesel and Biodiesel Blends

3.15.1. Identification of Product. – Biodiesel shall be identified by the term "biodiesel" with the designation "B100." Biodiesel blends shall be identified by the term "Biodiesel Blend."

3.15.2. Labeling of Retail Dispensers.

3.15.2.1. Labeling of Grade Required. – Biodiesel shall be identified by the grades S15 or S500. **b**iodiesel **b**lends shall be identified by the grades No. 1-D, No. 2-D, or No. 4-D.

3.15.2.2. EPA Labeling Requirements Also Apply. – Retailers and wholesale purchaser-consumers of biodiesel blends shall comply with EPA pump labeling requirements for sulfur under 40 CFR § 80.570.

3.15.2.3. Automotive Fuel Rating. – Biodiesel and biodiesel blends shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

3.15.2.4. Biodiesel Blends. – When biodiesel blends greater than 20 % by volume are offered by sale, each side of the dispenser where fuel can be delivered shall have a label conspicuously placed that states "Consult Vehicle Manufacturer Fuel Recommendations."

The lettering of this legend shall not be less that 6 mm (¼ in) in height by 0.8 mm ($^{1}/_{32}$ in) stroke; block style letters and the color shall be in definite contrast to the background color to which it is applied.

3.15.3. Documentation ~~for Dispenser Labeling Purposes~~ Required on Transfer Documents. – ~~**The retailer shall be provided, a**~~**A**t the time of delivery of the fuel, a declaration of the volume percent biodiesel **shall be disclosed on all transfer documents.** ~~**on an invoice, bill of lading, shipping paper, or other document. This documentation is for dispenser labeling purposes only; i**~~**I**t is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending.

(Amended 201X)

3.15.4. Exemption.

(a) Biodiesel blends that contain less than or equal to 5 % biodiesel by volume are exempted from the requirements of Sections 3.15.1. Identification of Product~~,~~ **and** 3.15.2. Labeling of Retail Dispensers~~**, and 3.15.3. Automotive Fuel Rating**~~ when it is sold as "diesel fuel" as required in Section 3.3. **Diesel Fuel.**

(b) Diesel fuel containing less than 1 % by volume biodiesel is exempted from the requirement of 3.15.3. Documentation for Dispenser Labeling Purposes.

(c) Diesel fuel containing 1 % and not more than 5 % by volume biodiesel fuel is exempt from disclosing the actual percent by volume of biodiesel as required in Section 3.15.3. Documentation for Dispenser Labeling Purposes. However, the term "Contains Biodiesel" or other similar terms shall be used.

(Amended 201X)

(Added 2005) (Amended 2008 **and 201X**)

Background/Discussion: At the 2009 SWMA Annual Meeting held in Clearwater, Florida, a discussion over blending was presented by a FALS member. Biodiesel is being blended at many terminals across the country in concentrations up to 5 %. Marketers downstream of the terminal are then attempting to blend additional biodiesel to target levels, and finding that their product is being over-blended because they were not aware that the fuel contained any biodiesel. Per Mr. Jennings, Tennessee, at least one major truck stop operator has already voiced concerns to the FALS Chairman. This amended proposal will remove the exemption declaration of biodiesel content on product transfer documents for biodiesel blends up to 5 %. Biodiesel is blended at terminals in concentrations up to 5 %. Mr. Jennings felt it was important to start this recommendation and have the FALS Chairman vet the proposal out to all members of the FALS Committee for their comments before the NCWM Interim meeting in January 2010.

3.15. Biodiesel and Biodiesel Blends

3.15.1. Identification of Product. – Biodiesel shall be identified by the term "biodiesel" with the designation "B100." Biodiesel blends shall be identified by the term "Biodiesel Blend."

3.15.2. Labeling of Retail Dispensers.

3.15.2.1. Labeling of Grade Required. – Biodiesel shall be identified by the grades S15 or S500. **b**iodiesel **b**lends shall be identified by the grades No. 1-D, No. 2-D, or No. 4-D.

3.15.2.2. EPA Labeling Requirements Also Apply. – Retailers and wholesale purchaser-consumers of biodiesel blends shall comply with EPA pump labeling requirements for sulfur under 40 CFR § 80.570.

3.15.2.3. Automotive Fuel Rating. – Biodiesel and biodiesel blends shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

3.15.2.4. Biodiesel Blends. – When biodiesel blends greater than 20 % by volume are offered by sale, each side of the dispenser where fuel can be delivered shall have a label conspicuously placed that states "Consult Vehicle Manufacturer Fuel Recommendations."

The lettering of this legend shall not be less that 6 mm (¼ in) in height by 0.8 mm ($^1/_{32}$ in) stroke; block style letters and the color shall be in definite contrast to the background color to which it is applied.

3.15.3. Documentation for Dispenser Labeling Purposes. – The retailer shall be provided, at the time of delivery of the fuel, a declaration of the volume percent biodiesel on an invoice, bill of lading, shipping paper, or other document. ~~**This documentation is for dispenser labeling purposes only; it is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending.**~~

3.15.4. Exemption. – Biodiesel blends that contain less than or equal to 5 % biodiesel by volume are exempted from the requirements of Sections 3.15.1.~~,~~ **and** 3.15.2.~~**, and 3.15.3.**~~ when it is sold as "diesel fuel" as required in Section 3.3.

(Added 2005) (Amended 2008 **and 20XX**)

The SWMA Committee recommends moving this item forward to the NCWM L&R Committee Agenda as a Voting item.

At the 2010 NCWM Interim Meeting, Mr. Hayes, FALS Chairman, gave an update on the subcommittee's work to remove the current exemption for biodiesel disclosure in diesel fuel at 5 % and below on product transfer documents.

A draft of substitute language was circulated among FALS members prior to the interim meeting. This substitute expanded the disclosure of biodiesel content on all transfer documents (not limited to ones to the retailer) and for levels greater than 1 % biodiesel. The substitute was an attempt to find middle ground. FALS members were more agreeable to this substitute, but many still felt more work is needed.

The L&R and FALS Committee received seven letters (refer to L&R Appendix E within the "Report of the 95th NCWM" Annual Meeting [SP 1115, 2010]) that do not support this proposal as stated. The Committee does support working on this issue and receiving feedback from industry. There is concern with the documentation and comingling of fuels. If fuel is comingled, it would need to be sampled every time, which could be quite costly.

An official would like to see this item move forward as a Voting item. This official would like the spring Regional meetings (NEWMA and CWMA) to review and further develop the language. American Petroleum Institute (API) stated there are many things to consider, such as preemption language, cost implications, commercial issue of declaring with each transaction. API has worked with marketers, but there continues to be a difference of opinion and no consensus. It was voiced by industry that all biodiesel needs to be documented on the paperwork. If not, it puts the wholesaler, retailer, and consumer at risk. There was a comment from a stakeholder that they do not agree with API's comment and that this has been a two year battle on who gets to do the blending. Blenders are over-blending because they are not aware of what the current blend is. To prevent this situation, it would require disclosure on the transfer document.

At the 2010 NEWMA Annual Meeting in Groton, Connecticut, a comment was heard from a stakeholder that the FTC has not changed the existing posting rule. The NEWMA L&R Committee recommends that this item remain Informational.

At the 2010 CWMA Annual Meeting in Springfield, Illinois, there were several comments stating that the exact percentage of an alternative fuel needs to be known. Without the percentage being known, mislabeling can occur, which is not good for consumer, marketers, and the environment and renewable fuels. One question that needs to be addressed is: what is the downside of providing this information? A representative of the National Biodiesel Board (NBB) does not support this proposal and would like to have further discussions to seek what is best for the entire industry. They also commented that FTC declined to modify requirements for disclosure on product transfer documents for fuels containing 5 % or less biodiesel. A state official disagrees that the exact percentage is necessary since it is the blender's responsibility to test the product prior to blending. A representative of the Renewable Fuels Association would like to see the proposal expanded to include all additives and stated that the focus needs to be in broader terms instead of renewable fuels and recommends that the scope include all blending components.

It was recommended by the CWMA L&R Committee that this item move forward as an Informational item and that FALS form a task force under their guidance, to help further develop this proposal.

At the 2010 NCWM Annual Meeting held in St. Paul, Minnesota, the Committee received numerous letters (refer to Appendix E within the "Report of the 95th NCWM" [SP 1115, 2010]) and heard from fifteen stakeholders and industry representatives, supporting section 3.15.3 that requires disclosure. Several participants expressed concerns with sections of the proposal. Currently, the FTC has the authority to protect consumers and they are looking at requiring product transfer documents. Several stakeholders indicated that they expect FTC to issue a proposed rule on biodiesel in the near future. It would be best if we stayed in line with the FTC ruling on the biodiesel issue. The very low blends seem to be the challenge.

The sections that are of concern to stakeholders are 3.15.4 (b) & (c), since it conflicts with reporting of taxes collected on biodiesel. The exact amount of the blend needs to be documented on the transfer document. The

concern is when fuel is picked up from various locations and delivered; the actual amount of biodiesel is not documented. Currently blending at the terminal is not an issue.

The Committee agreed to allow time for the FALS Committee to receive additional information and further discuss this item.

At the 2010 CWMA Interim Meeting, a representative from a Petroleum Marketers Association commented that disclosure sets the tone for a chain of events for biodiesel. It was important for disclosure to be provided all the way through the distribution process because of the potential for over-blending. He believes that it is not realistic for wholesale distributors to test for biodiesel due to the cost. He supports the proposal with exception of the exemptions provided in 3.15.4 Exemptions (b) and (c). A state regulator agreed with this testimony. Another state regulator commented that the current proposal follows the same format as the ethanol regulation. A petroleum dealer mentioned that due to the RFS2, disclosure is needed in order to meet the mandates for blending.

A representative with the NBB commented that this proposal needs to be further developed by the FALS. She believes that we have not heard from all segments of the industry regarding this proposal. She also expressed concern that there will be no benefit to consumers if the cost of the extra testing of fuel is being passed on to consumers. It was mentioned that there are quick testing methods available for determining biodiesel content in the field; although, some are more accurate than others. The NBB representative also stated that the FTC believes that it is the responsibility of the blender to determine biodiesel content prior to blending.

A producer mentioned that the disclosure proposal would require terminals to purchase equipment and to do additional testing. The producer is concerned about tank stratification and the need to change bills of lading as the content varies. Cost and manpower are major concerns for producers. A marketer provided testimony that it is more efficient for terminals to purchase testing equipment as opposed to requiring all downstream blenders to purchase testing equipment. He stated that changing bills of lading is only a software change. He believes that it is the blenders' obligation to meet the law for labeling, and it is difficult if the biodiesel content is not disclosed. The NBB representative questioned how often marketers test. A marketer responded that they do not routinely test; since they rely on transfer documents to accurately state what they are getting. Another marketer stated that producers can control what goes into their tanks and questioned if producers know how much biodiesel is in each batch. A producer responded that for barrels received by water in Savannah, Georgia, the biodiesel content is only disclosed on Plantation pipeline shipments if it is more than 5 %. The CWMA L&R Committee recommends that the proposal be further developed by the FALS.

At the 2010 WWMA and SWMA Annual Meeting, an industry representative spoke in support of keeping this item Informational and allow the FALS to further develop the requirements in light of the comments received. An industry representative stated that all shipping documents should show the exact blend of biodiesel. The Association recommends that this item remain Informational.

At the 2010 NEWMA Interim Meeting, the NEWMA L&R Committee received written comments from API (refer to Appendix E). The NEWMA L&R Committee recommends that this item move forward as an Informational item.

237-4 HB 130, Engine Fuels and Automotive Lubricants Regulation, Section 2.1.2. Gasoline-Oxygenated Blends and 2.1.3. Gasoline-Ethanol Blends

Source: Central Weights and Measures Association

Purpose: Modify the language in Section 2.1.2. Gasoline-Oxygenate Blends and 2.1.3. Gasoline-Ethanol Blends to be aligned with the Environmental Protection Agency's (EPA's) language in the March 2009 Growth Energy waiver request.

Item Under Consideration: FALS will need to provide recommended language. Section 2. Standard Fuel Specifications is provided below because the most recent language was not in HB 130 (2009), but was released as an amendment in August 2009 (in place of republishing HB 130 [2010]). This language, minus the proposed modifications, has been included in the HB 130 (2011).

Section 2. Standard Fuel Specifications

2.1.2. Gasoline-Oxygenate Blends. – Shall contain no more than 10 volume percent ethanol. For other oxygenates, blends shall contain no more than 2.0 mass percent oxygen except fuels containing aliphatic ethers and/or alcohols (excluding methanol) shall contain no more than 2.7 mass percent oxygen.

(Added 2009)

2.1.3. Gasoline-Ethanol Blends. – When gasoline is blended with 1 to 10 volume percent ethanol, the ethanol shall meet the requirements of ASTM D4806 and the blend shall meet ASTM D4814 with the following permissible exceptions:

(a) The maximum vapor pressure shall not exceed the ASTM D4814 limits by more than 1.0 psi for:

(1) Only 9 to 10 volume percent ethanol blends from June 1 through September 15.

(2) All blends of 1 to 10 volume percent ethanol from September 16 through May 31.

(b) Until May 1, 2012, or until ASTM D4814 incorporates changes to the 50 volume percent evaporated point to account for the volatility effects of up to 10 volume percent ethanol, whichever occurs earlier, the distillation minimum temperature at the 50 volume percent evaporated point shall not be less than 66 °C (150 °F) (see Notes 1and 2).

(c) Until May 1, 2012, or until ASTM D4814 incorporates changes to the vapor lock protection minimum temperature for Classes 1 - 5 to account for the volatility effects of up to 10 volume percent ethanol, whichever occurs earlier, the minimum temperature for a Vapor-Liquid Ratio of 20 for the applicable vapor lock protection class for gasoline-ethanol blends shall be as follows (see Notes 1 and 2):

(1) Class 1 shall be 54 °C (129 °F)

(2) Class 2 shall be 50. °C (122 °F)

(3) Class 3 shall be 47 °C (116 °F)

(4) Class 4 shall be 41.5 °C (107 °F)

(5) Class 5 shall be 39 °C (102 °F)

(6) Class 6 shall be 35 °C (95 °F)

All gasoline and gasoline-ethanol blends sold in Area V (as shown in ASTM D4814 Appendix Fig. X1.2) shall meet the vapor lock protection minimum temperatures in ASTM D4814.

NOTE 1: The value for the 50 volume percent evaporated point noted in Section 2.1.3.(b) and the values for Classes 1, 2, and 3 for the minimum temperature for a Vapor-Liquid Ratio of 20 in Section 2.1.3.(c) are now aligned and identical to those that are being published in ASTM D4814-09b and apply equally to gasoline and gasoline-ethanol blends. In future editions of NIST Handbook 130, Section 2.1.3.(b) will be removed editorially and the reference to Classes 1, 2, and 3 in Section 2.1.3.(c) will be removed editorially. In addition, existing Sections 2.1.3. through 2.1.7. of NIST Handbook 130 will be renumbered.

NOTE 2: The temperature values (e.g., 54 °C, 50. °C, 41.5 °C) are presented in the format prescribed in ASTM E29 "Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications."

(Added 2009)

Discussion/Background: The EPA will make a ruling on the March 2009 Growth Energy Waiver. When the ruling is announced, the above regulation will need to be extended to cover E15 gasoline blends. The Renewable Fuels Association (RFA) is proposing a broader approach to recognizing the authorized proportion of ethanol. RFA recommends the following language:

> **2.1.2. Gasoline-Oxygenate Blends.** – Shall contain no more than **the maximum proportion of ethanol authorized by US Environmental Protection Agency (EPA) under Section 211 of the Clean Air Act.** ~~**10 volume percent ethanol. For other oxygenates, blends shall contain no more than 2.0 mass percent oxygen except fuels containing aliphatic ethers and/or alcohols (excluding methanol) shall contain no more than 2.7 mass percent oxygen.**~~

At the 2010 CWMA Interim Meeting, an update was given on the current consideration by EPA to allow higher ethanol blends in conventional vehicles. The FALS Chairperson stated that the FALS Subcommittee may be meeting to discuss this issue at the NCWM Interim Meeting in January 2011. The CWMA L&R Committee received two letters on this issue (refer to Appendix F). The CWMA L&R Committee recommends that this item be forwarded to the FALS for further work.

At the 2010 WWMA Meeting, an industry representative expressed concern on what this action will have on car warranties and potential liability issues. A representative stated that he opposed this item until an official ruling is made by the EPA. The WWMA L&R Committee recommends that this item be made developmental.

At the 2010 SWMA Annual Meeting and the 2010 NEWMA Interim Meeting, there were no comments heard on this item. The Conference would like to see a recommendation from the FALS. Both Associations are recommending that these items go to the FALS for further development.

237-5 HB 130, Engine Fuels and Automotive Lubricants Regulation, Section 2.1.4. Minimum Motor Octane Number

Source: BP Global Fuels Technology – West Coast

Purpose: Remove Section 2.1.4 Minimum Motor Octane Number since it is considered obsolete.

> ~~**2.1.7. Minimum Motor Octane Number. The minimum motor octane number shall not be less than 82 for gasoline with an AKI of 87 or greater;**~~

Background/Discussion: In the early 90s, the Table titled "Automotive Spark-Ignition Engine Fuel Antiknock Indexes in Current Practice" was removed from the body of D4814 and placed into an Appendix in D4814. This Appendix is non-mandatory information and is not part of the specification. It is inappropriate for NIST HB 130 to continue with the 82 motor octane number minimum for the following reasons: 1) 82 motor octane number minimum is not an ASTM D4814 specification; 2) FTC regulates octane posting and has no motor octane number minimum; 3) neither the Kinder Morgan Pipeline nor the Olympic Pipeline requires a minimum motor octane number specification; and 4) the Colonial Pipeline has no motor octane number minimum for either Reformulated Blendstock for Oxygenate Blending (RBOB) or Conventional Blendstock for Oxygenate Blending (CBOB).

Recent data shows a low motor octane number is actually preferable for the current fleet of vehicles. Motor and Research octane numbers are equally important to the performance of the motor vehicle engine. A minimum motor octane number requirement offers no more protection to the consumer than the road octane number which is the average of the Motor and Research octane numbers.

At the 2010 WWMA Annual Meeting, the WWMA L&R Committee is recommending that this item be made Informational.

At the 2010 SWMA Annual Meeting and the 2010 CWMA and NEWMA Interim Meeting, the Associations are recommending that this item be made Informational and be forwarded to the FALS.

237-6 HB 130, Engine Fuels and Automotive Lubricants Regulation, Section 3.13.

Source: Central Weights and Measures Association

Purpose: To modify the Fuels and Automotive Lubricants Regulations to require invoice requirements be established for consumers to protection. If changes are made to this item, the corresponding Method of Sale for retail oil change services will need to be added to HB 130.

Item Under Consideration:

3.13. Oil.

3.13.1. Labeling of Vehicle Motor Oil.

3.13.1.1. Viscosity. – The label on each container of vehicle motor oil shall contain the viscosity grade classification preceded by the letters "SAE" in accordance with the SAE International's latest version of SAE J300.

3.13.1.2. Intended Use. – The label on each container of vehicle motor oil shall contain a statement of its intended use in accordance with the latest version of SAE J~~300~~**183**.

3.13.1.3. Engine Service Category. – The label on ~~**each**~~ **a** ~~**container of**~~ vehicle motor oil **container, receptacle, pump, dispenser, or storage tank and the invoice from the sale of vehicle motor oil dispensed from a receptacle, pump, dispenser, or storage tank** shall contain the engine service category, or categories, met in letters not less than 3.18 mm ($^1/_8$ in) in height, as defined by the latest version of SAE J183 or API Publication 1509, "Engine Oil Licensing and Certification System."

3.13.1.3.1. ~~Exception for Quantities of One Gallon (3.785 L) or Less~~ Inactive or Obsolete Service Categories. ~~– A container of engine vehicle motor oil with a volume of 1 gal (3.785 L) or less that does not meet an active service category, as defined by the latest version of SAE J183, shall bear a plainly~~ **The label on a vehicle motor oil container, receptacle, pump, dispenser, or storage tank and the invoice from the sale of vehicle motor oil dispensed from a receptacle, pump, dispenser, or storage tank shall bear a plainly** visible cautionary statement in compliance with SAE J183, Appendix A, ~~**for obsolete API oil categories**~~ **whenever the vehicle motor oil in the container or in bulk does not meet an active API service category as defined by the latest version of SAI J183.**

3.13.1.3.2. Tank Trucks or Rail Cars. – Tank trucks or rail cars that are used to deliver vehicle motor oil are not required to display the SAE viscosity grade and service category or categories as long as the bill of lading or other documentation provides that information.

Background/Discussion: At the 2010 CWMA Interim Meeting, a state regulator stated that oil changing facilities are affecting revenues from legitimate businesses by masquerading as branded facilities, while selling lower-quality oil (refer to Appendix G). The consumer believes they are receiving the advertised brand of oil. At least one branded oil company has investigated certain questionable installers, filed lawsuits, and have successfully closed those suits with installers in the area of trademark infringement and deceptive trade practices. To assist in mitigating these unlawful trade practices and to protect consumers against fraudulent activity, it is recommended that invoice be established. A state regulator questioned if businesses were using the same hose for hydraulic and motor oil, or if the hose would be flushed prior to using it for a different product. He remarked that there would be a contamination factor. The CWMA L&R Committee recommends that the item under consideration move forward to the NCWM L&R Committee for consideration.

At the 2010 WWMA Annual Meeting, an industry representative, who submitted this proposal, recommended that the term "pump" be dropped from the language. A state official questioned if checking the labeling on bulk tanks is the responsibility of weights and measures, or is it an industry issue? The Technical Advisor suggested giving consideration to mirroring this same language in the method of sale. The WWMA L&R Committee recognizes that

statement of brand is required on liquid measuring devices in HB 44. The WWMA L&R Committee recommends this item be moved forward as Informational item and have it be reviewed by the FALS**.**

3.13. Oil.

3.13.1. Labeling of Vehicle Motor Oil.

3.13.1.1. Viscosity. – The label on ~~**each container of**~~ **a** vehicle motor oil **container, receptacle, dispenser, or storage tank and the invoice from service on an engine that includes the installation of vehicle motor oil dispensed from a receptacle, dispenser, or storage tank** shall contain the viscosity grade classification preceded by the letters "SAE" in accordance with the SAE International's latest version of SAE J300.

3.13.1.2. Intended Use. – The label on ~~**each container of**~~ **a** vehicle motor oil **container** shall contain a statement of its intended use in accordance with the latest version of SAE ~~**J300**~~ **J183**.

3.13.1.3. Brand – The label on a vehicle motor oil container and the invoice from service on an engine that includes the installation of vehicle motor oil dispensed from a receptacle, dispenser, or storage tank shall contain the name, brand, trademark, or trade name of the vehicle motor oil.

~~**3.13.1.3.1. Exception for Quantities of One Gallon (3.785 L) or Less. A container of engine vehicle motor oil with a volume of 1 gal (3.785 L) or less that does not meet an active service category, as defined by the latest version of SAE J183, shall bear a plainly visible cautionary statement in compliance with SAE J183, Appendix A, for obsolete API oil categories.**~~

3.13.1.~~3~~4. Engine Service Category. – The label on ~~**each container of**~~ **a** vehicle motor oil **container, receptacle, dispenser, or storage tank and the invoice from service on an engine that includes the installation of vehicle motor oil dispensed from a receptacle, dispenser, or storage tank** shall contain the engine service category, or categories, met in letters not less than 3.18 mm ($^{1}/_{8}$ in) in height, as defined by the latest version of SAE J183 or API Publication 1509, "Engine Oil Licensing and Certification System."

3.13.1.4.1. Inactive or Obsolete Service Categories. – The label on a vehicle motor oil container, receptacle, dispenser, or storage tank and the invoice from service on an engine that includes the installation of vehicle motor oil dispensed from a receptacle, dispenser, or storage tank shall bear a plainly visible cautionary statement in compliance with SAE J183, Appendix A, whenever the vehicle motor oil in the container or in bulk does not meet an active API service category as defined by the latest version of SAE J183.

3.13.1.4.2. Tank Trucks or Rail Cars. – Tank trucks, rail cars, or other types of delivery trucks that are used to deliver vehicle motor oil are not required to display the SAE viscosity grade and service category or categories as long as the bill of lading or other documentation provides that information.

At the 2010 SWMA Annual Meeting, Mr. Ferrick from API notified attendees that they were seeing a revised proposal. This revision was not presented at the 2010 CWMA and WWMA meetings. Mr. Ferrick supports this item stating that HB 130 has required that labels on motor oil packages identify the oil's SAE viscosity and API performance level. Both of these items are important pieces of information for consumers. The changes proposed for HB 130 are intended to apply the labeling requirements for packaged motor oils to oils sold in bulk. The changes as proposed would require motor oil manufacturers and distributors to identify the oils they deliver and for installers to identify the oils they dispense. Requiring distributors to identify the motor oils they deliver to installers will help ensure that installers know what they are dispensing, and requiring installers to do the same on their invoices will provide the same level of information for consumers. The SWMA L&R Committee reviewed the revised language submitted and agreed that the item has merit. It was also noted that the language needs to be similar for the regulations as well as the method of sale in HB 130. The SWMA L&R Committee would like to move this item forward as an Informational item.

At the 2010 NEWMA Interim meeting, a representative of API spoke in favor of the need to disclose on all motor oil storage vessels and in receipts for oil change services the motor oil information. Currently, consumers may not be sure of what motor oil product they are receiving and may be subjected to fraud. A disclosure requirement would clearly disclose to consumers what they are purchasing and help eliminate any fraud. The NEWMA L&R Committee believes this is a consumer friendly issue, and that requiring retailer invoices for oil change services to disclose the manufacturer, brand name, SAE viscosity, and service requirements is appropriate. Proposed labeling requirements should be included on the agenda as a Developing item.

260 NIST HANDBOOK 133

260-1 HB 133, Moisture Allowances Section 2.3.8. Moisture Loss for products not listed.

Source: Moisture Loss Work Group (MLWG).

Purpose: Provide additional guidance for making moisture allowances for products not listed in HB 133.

Item Under Consideration:

2.3.8. Moisture Allowances

e. How is moisture loss handled for products not listed in NIST Handbook 133?

Officials can test products for which no moisture loss guidance has been provided. If studies are a necessity they should be a collaborative effort between officials and industry. Because of the potential impact on interstate commerce, studies should be completed on a nationwide basis and not by individual jurisdictions unless circumstances justify only local consideration.

The amount of moisture loss from a package is a function of many factors, not the least of which is the product itself (e.g., moisture content, texture and density), packaging, storage conditions (e.g., temperature, humidity, and air flow), time, handling and others. If a packaged product is subject to moisture loss, officials must allow for "reasonable" variations caused by moisture either evaporating or draining from the product. Officials cannot set arbitrary moisture allowances based solely on their experience or intuition. Moisture allowances must be based on scientific data and must be "reasonable." Reasonable does not mean that all of the weight loss caused by moisture evaporation or draining from the product must be allowed. As a result of product and moisture variability, the approach used by an official must be developed on a case-by-case basis depending on many factors to include, but not be limited to, the manufacturing process, packaging materials, distribution, environmental influence and the anticipated shelf life of the product.

NIST Handbook 130 provides a starting point for developing a workable procedure in the Interpretation and Guideline Section 2.5.6. regarding "Resolution for Requests for Recognition of Moisture Loss in Other Packaged Products." Most studies involving nationally distributed products will require that products be tested during different seasons of the year and in different geographic locations to develop a nationally recognized moisture allowance. Some studies may require the development of laboratory tests used for inter-laboratory comparisons to establish moisture content in products at time of pack or at the time of inspection.

Moisture loss or gain is a critical consideration for any net content enforcement effort and one that, in most cases, cannot be addressed solely by a field official. If moisture loss issues are to be deliberated, it is the regulatory official's responsibility to resolve the packer's concern utilizing available resources and due process procedures. To fulfill this obligation the official may be required to utilize specialized test equipment and specific laboratory procedures. Additionally, the collection of adequate test data may require product examination over a broad geographical area and consideration of a wide range of environmental factors. If a national effort is required, a coordinated effort involving industry, trade associations, weights and measures officials, and federal agencies may be required. NIST will provide technical support upon request. If studies are a necessity they should be a collaborative effort between officials and industry but may be very time consuming depending on the product. Because of the

potential impact on interstate commerce, studies must be completed on a nationwide basis and not by individual jurisdictions unless circumstances justify only local consideration.

Background/Discussion: In previous years, the MLWG reviewed draft changes that were developed to revise and update HB 133 (2005). Some of the proposed changes and recommendations were developed to improve the guidance on making moisture allowances. At the 2010 NCWM Annual Meeting held in St. Paul, Minnesota, item 260-1 (refer to the "Report of the 95th NCWM" [SP 1115, 2010]). was voted through the Conference with the exception of the item under of consideration.

At the 2010 CWMA Interim Meeting, a state regulator stated that HB 133 provides moisture allowance for only a few products. The regulator provided an example where a product was claiming moisture allowance for a product not contained in HB 133. This regulator was provided with only verbal assistance from NIST regarding what was needed to demonstrate the request for moisture allowance. The regulator believes written procedures need to be developed to provide guidance and a step-by-step protocol developed for determining moisture allowance in a specific product. Another state regulator agreed and commented that determination of moisture allowance needs to be consistent. An industry representative agreed that more guidance is needed and recommended that the proposal include the necessary information required to demonstrate moisture loss that warrants an allowance. The CWMA L&R Committee recommends that the MLWG continue to develop this proposal.

At the 2010 WWMA Annual Meeting, a county official expressed concern that the existing language is conflicting and does not provide specific guidance to weights and measures officials (i.e., statements that moisture loss should be determined on a case-by-case basis and at the same time calls for a nationwide study). It was recommended that the MLWG focus its effort on developing a clearer criteria and process for determining moisture loss. The WWMA L&R Committee agrees that the following language within the proposal is contradictory and vague and does not provide specific guidance to officials.

- 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 procedure"
- a coordinated effort involving industry, trade associations, weights and measures officials may be required

The WWMA L&R Committee recommends that this be a Developmental item.

At the both the 2010 SWMA Annual Meeting and the 2010 NEWMA Interim Meeting, both Associations agreed that the item was not developed. It was recommended by both Associations that this moved forward as a Developing item.

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

Source: Western Weights and Measures Association (WWMA)

Purpose: Update HB 133, Chapter 4.7. Polyethylene Sheeting – Test Procedure to provide new density values for heavier density plastics that are currently in the marketplace.

Polyethylene bags labeled as High Density (HDPE) or similar language have been found to package products whose labeled net weights meet calculated target net weights when employing a density factor of 0.92 g/cm³. When a density factor of 0.95 g/cm³ is used, as appropriate, in the calculation for high density polyethylene materials, these products commonly fail to meet the calculated target net weight. Further testing of these packages of polyethylene bags reveals that one or more of the labeled width, thickness, or count statements are inaccurate. HDPE product distributors that place a net weight statement on their packages based upon the Linear Low Density Polyethylene (LLDP) density value (0.92 g/cm³) have an approximately 3 % advantage over the distributor that uses the correct, high density, factor.

Item Under Consideration: Amend the asterisked footnote below Step 3 as follows:

> ***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 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.**

Background/Discussion: A proposal was presented at the WWMA 2009 Annual Meeting in Los Cruces, New Mexico, that manufacturers and distributors of polyethylene bags labeled as "High Density," or HDPE, have been found to package products whose labeled net weights meet calculated target net weights when employing a density factor of 0.92 g/cm³. When a density factor of 0.95 g/cm³ is used, as appropriate, in the calculation for high density polyethylene materials, these products commonly fail to meet the calculated target net weight. Further testing of these packages of polyethylene bags reveals that one or more of the labeled width, thickness, or count statements are inaccurate.

For example, a box of HDPE has stated dimensions of 24 in x 40 in x .4 mil, and a count of 250. Using the only density factor found in HB 133, 0.92 g/cm³, the calculated target net weight, and that shown on the label, would be 6.38 lbs. If using the actual density factor for the HDPE bags of 0.95 g/cm³, the target net weight would be 6.59 lb. This means that HDPE product distributors that place a net weight statement on their packages based upon the Linear Low Density Polyethylene (LLDP) density value (0.92 g/cm³ have an approximately 3 % advantage over the distributor that uses the correct, high density, factor.

When the original testing procedure was developed, HDPE bags had not yet entered the marketplace. Currently, this product is quite prevalent in the United States. Amending the test procedure will aid weights and measures inspectors in enforcing labeling requirements that allow true value comparisons and close a loophole within HB 133.

The 2009 WWMA Association supports this item and recommends that it be a Voting item.

NEWMA reviewed this item at their 2009 Interim Meeting and proposes this item be a Developing item.

At the NCWM 2010 Interim Meeting, comments were heard on this item and Item 232-1 together at the open hearings. The Committee heard support for the suggestion that the density factor should change from 0.92 g /cm³ to 0.95 g/cm³. A California official stated that the information provided by the WWMA was data extracted from Internet searches. Currently, manufacturers are complaining that under current practice, they cannot compete fairly.

Mr. Jackelen with Berry Plastics urged the Committee to reject this proposal. Mr. Jackelen stated that 0.92 g/cm³ currently works for manufacturers and that changing it to 0.95 g/cm³ will cause undue cost and waste. Most manufacturers do not make high density (HD) bags, but are producing blends. Mr. Jackelen also stated an additional reason to reject the proposal is 0.95 g/cm³ bags, if punctured will continue to tear.

A Weights and Measures Official stated that if you use the term HD, then you are bound by the 0.95 g/cm³ density. If you use the length x width x thickness to determine the net weight, then the density needs to be added to the package labeling. Another official stated that manufacturers should consider disclosing the density factor on every product as part of the labeling. It was voiced that if there are questions about an absolute 0.95 g/cm³ density then there should be an alternate suggestion. Another official stated that 0.95 g/cm³ will be factored in when the density is not known. The Committee received letters that were reviewed on this item (refer to Appendix B). The Committee recommends moving the item under consideration forward as a Voting item.

At the 2010 NEWMA Annual Meeting in Groton, Connecticut, there was concern that there appears to be a lack of data on this item. It was not reviewed by all regions and not presented to industry to seek comments. The NEWMA L&R Committee felt that this item was not an emergency and would like to review comments received by all the regions and industry.
At the 2010 CWMA Annual Meeting in Springfield, Illinois, there were no comments heard on this item and the CWMA L&R Committee recommends that this item remain a Voting item.

At the 2010 NCWM Annual Meeting in St. Paul, Minnesota, an official stated that his comments were the same as he expressed in Item 232-4 (refer to the "Report of the 95th NCWM" [SP 1115, 2010]. The official stated that with the amendments recommended by another official expressed in Item 232-4, they would support this proposal. There is agreement that the role of the Conference is not to determine quality issues, but rather to set testing standards for inspectors. Moving this item to Informational status will allow time to receive additional information and data from manufacturers of polyethylene.

The Committee believes that additional work needs to be done on this item including reviewing the labeling requirement of polyethylene. This may include requiring a mandatory statement and review of ASTM standards. The status of this item was changed to Informational during the 2010 Annual Meeting.

At the 2010 CWMA Interim Meeting, there were no comments heard on this item. The CWMA L&R Committee recommends that this move forward as an Informational item.

At the 2010 WWMA Annual Meeting, a state official commented that he is in support of this item with the proposed amended changes to replace the existing language with:

> *****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 ~~**handbook**~~ **regulation, when** ~~**the actual density is not known**~~ **(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 the actual density is not known**~~**. For products labeled High Density, HDPE, or similar wording, that does 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.**

The WWMA L&R Committee recommends this item as amended move forward as a Voting item.

At the 2010 SWMA Annual Meeting, there were no comments heard on this item. The SWMA L&R Committee would like to seek additional information and comments from industry, other than the material safety data sheets that were submitted. The SWMA L&R Committee recommends that this item move forward as an Informational item.

At the 2010 NEWMA Interim Meeting, there were no comments heard on this item. The NEWMA L&R Committee would like this item to move forward as an Informational item.

260-3 National Pasta Association – HB 133, Moisture Allowance for Pasta Products

Source: Southern Weights and Measures Association (SWMA)

Purpose: Amend HB 133 by adopting a 3 % moisture allowance for macaroni, noodle, and like products (pasta products).

Item Under Consideration: Amend HB 133, Chapters 1 and 2, Moisture allowance to be amended as follows and which will incorporate a 3 % moisture allowance for pasta products, adding the language in bold below:

- Chapter 1: Why do we allow for moisture loss or gain?
  - This handbook provides "moisture allowances" for some meat and poultry products, flour, **pasta products,** and dry pet food.
  - Test procedures for flour, **pasta products,** some meat, and poultry are based on the concept of a "moisture allowance" also known as a "gray area" or "no decision" area.

- Chapter 2: Moisture Allowances:

  - What is the moisture allowance for flour, pasta products, and dry pet food? The moisture allowance for flour, pasta products, and dry pet food is 3 % of the labeled net weight.

  Note: Pasta products means all macaroni, noodle, and like products packaged in Kraft paper bags, paperboard cartons, and/or flexible plastic bags with a moisture content of 13 % or less at the time of pack.

- Chapter 2: How is the average error for the moisture allowance corrected?

  - This handbook provides "moisture allowances" for some meat and poultry products, flour, **pasta products,** and dry pet food.

Background/Discussion: Studies indicate that moisture loss for pasta products is reasonably predictable over time. Pasta exhibits consistent moisture loss in all environments and packaging, which can vary more than 4 % due to environmental and geographic conditions. Although it eventually reaches equilibrium with the surrounding atmosphere because it is hygroscopic, this balance does not occur until long after packaging and shipping.

At the 2010 Interim Meeting, the Committee heard support for this item from industry and stakeholders. If this item is approved, it will also amend the Moisture Allowance Table in HB 133 giving pasta a 3 % moisture allowance. The Committee reviewed the submitted study (refer to the "Report of the 95th NCWM" [SP 1115, 2010]). The Committee recommends moving the item under consideration forward as a Voting item.

At the 2010 NEWMA Annual Meeting held in Groton, Connecticut, a representative of the pasta industry gave the group an explanation of the item and expressed support for this item as written. The NEWMA L&R Committee also supports this item.

At the 2010 CWMA Annual Meeting held in Springfield, Illinois, a representative from the National Pasta Association stated the data supports the 3 % moisture allowance. A Weights and Measures Official commented that testing in their state does not support the proposal. An industry representative stated that guidance is needed for an established moisture allowance and currently there are no guidelines to establish the moisture loss percentage.

At the 2010 NCWM Annual Meeting held in St. Paul, Minnesota, a representative for the National Pasta Association spoke on behalf of the proposal. This item will allow for a specific moisture loss percentage to be taken. Inspectors will now have a specific number that they can apply to the pasta product. Representatives of several pasta companies spoke in support of this item stating that it is consistent with numerous studies that have been done. A state director opposes this item, since pasta is known to have moisture loss due to the type of product it is. He further explained that applying a blanket 3 % moisture loss does not make sense, what may be good in Florida may not be good in New Mexico. A Weights and Measures Official stated that applying the 3 % does not stop an inspector from going into a distribution or point of pack to inspect; especially if the inspectors believe the packer is under filling packages. He urged that this proposal be supported to provide a tool. Another official felt that the proposal should be voted through, it is important to recognize guidelines for consideration. A pasta association representative also agreed that this work goes back a couple of decades and that several studies were provided for consideration. Another representative explained that they pack to net weight. Pasta contains 10 % to 13 % moisture; if the moisture standard is lowered the product falls apart along with the product quality. This item neither passed nor failed vote at the National and was returned to the Committee.

At the 2010 CWMA Interim Meeting, a state regulator provided information regarding informal testing of pasta products in their state. The concern is pasta can gain moisture as well as lose moisture; therefore, they oppose a national moisture allowance for pasta products. It was further explained that moisture loss/gain seems to be dependent upon the type of packaging used. This regulator also commented that product is no longer warehoused for long periods of time, and that it is mostly in climate controlled stores, which would prevent the need for a moisture allowance. Another state regulator agreed that a national standard may not be appropriate due to humidity differences from state to state. The CWMA L&R Committee is recommending that this item be Withdrawn.

At the 2010 WWMA Annual Meeting, 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. The WWMA L&R Committee recommends that any additional data from studies be provided for review. The WWMA L&R Committee also recommends that this item move forward as a Voting item.

At the 2010 SWMA Annual Meeting, there were no comments heard on this item. The SWMA L&R Committee agrees that this item be Withdrawn. However; if further studies are developed, then this should be taken into consideration.

At the 2010 NEWMA Interim Meeting, the conference expressed strong reservations about this proposal. Comments were heard regarding industry practices in regards to moisture loss when packing and if there is a need to codify the moisture loss allowance at all. A member commented that if this proposal passed, other industries would now approach the conference and ask for specific moisture allowances for their products. The NEWMA L&R Committee recommends that this item be Withdrawn.

260-4 HB 133, Seed Count for Agriculture Seed

Source: Western Weights and Measures Association (WWMA)

Purpose: The WWMA calls for the NCWM to rescind action taken in adopting the provisions of NCWM 2010 L&R Agenda Item 260-2 (refer to Appendix H). The NCWM L&R Committee should undertake, or establish a work group (WG) to undertake, necessary studies, laboratory testing, field trials, and other appropriate measures to establish procedures for verification of the accuracy and repeatability of "mechanical seed counter" devices and/or to develop seed count procedures that are practical and reliable for field enforcement activities by Weights and Measures officials

Item Under Consideration: Call for Reconsideration and/or Repeal of action taken at 2010 Annual Meeting of NCWM (refer to the "Report of the 95th NCWM" [SP 1115, 2010]) to amend HB 133 Sections 4.2 and to add new Section 4.11 re: Seed Count Tests

Background/Discussion: At the 2010 NCWM, the L&R Agenda Item 260-2 was not appropriately presented in full for adequate consideration and review by all Conference attendees prior to discussion, debate, and voting. Late into L&R Open Hearing discussions, it was clarified that the item intended to adopt (as the mandated HB 133 testing procedure for verification of the count of packaged corn, soybean, field bean, and wheat seeds) language from Section 12 "Mechanical Seed Count" of the "Rules for Testing Seeds" of the Association of Official Seed Analysts (AOSA) (Appendix F, refer to the "Report of the 95th NCWM" [SP 1115, 2010]). The publication of an incomplete proposal and delayed clarification of the full proposal impeded abilities to fully research the proposed testing methods, associated equipment, and to develop points for discussion.

Section 12 of the "Rules for Testing Seeds" (refer to Appendix H) requires multiple, specific, highly technical steps that present significant challenges with which to comply (i.e., opportunities for non-compliant packers to challenge procedures and test results). Additionally, equipment costs are excessive and Weights and Measures officials are not trained or qualified to perform all required tests.

Examples include:

Section 12. - Mechanical Seed Count

Concerns:

- Requires use of a "mechanical seed counter"
- Such devices are typically permanently installed in a laboratory setting.
- Extreme care is required for transport of seed counters to the field.
- Device cost is approximately $8,000.

Section 12.1 – Requires samples of 500 grams (soybean/corn/field beans), 100 grams (wheat)

- Instructs that samples are to be "received" in moisture proof containers
- Samples must be retained in moisture proof containers "until the weight of the sample prepared for purity analysis is recorded"

Concerns:

- Above implies that samples are to be transferred to a laboratory for testing.
- Above indicates that sample is intended to be subjected to purity analysis.
- "Purity analysis" is a specific term in the seed inspection arena, requiring highly technical procedures performed by highly skilled technicians.
- Such are not procedures with which Weights and Measures officials are familiar.

Section 12.2 – Seed counter calibration

- Must manually count 10 sets of 100 seeds
- Requires visual examination to ensure that seeds are "approximately the same size and shape as the seeds in a sample being tested."
- Combined sample of 1,000 seeds (manually counted) is passed through mechanical seed counter with device count not to vary more than ± 2 seeds from 1,000
- If not within ± tolerance, "…clean mirrors; adjust feed rate and/or reading sensitivity… Rerun until within tolerance"

Concerns:

- Reference to "sample being tested" refers to required "purity analysis."
- Instruction to "rerun until within tolerance" includes no instruction to conduct additional trial counts for repeatability.
- Preliminary counts failing to meet tolerance could, theoretically, be unlimited.
- A single seed counter indication within tolerance may not indicate reliability.

Section 12.3. - Sample preparation *(Emphasis added)*

- "Immediately after opening the moisture proof container, mix and divide the submitted sample, in accordance with section 2.2, to obtain a sample for purity analysis…"
- "Conduct the purity analysis to obtain pure seed for the seed count test"

Concerns:

- The term "divide" has specific meaning and requires very detailed procedural requirements set forth in the "Rules for Testing Seed" manual.
- Reference to "…in accordance with section 2.2…" confirms the above.
- Section 2.2. states: "A suitable type of mechanical divider (conical, centrifugal, riffle, etc.) should be used." These procedures are not addressed in new § 4.11.
- Need for "suitable…divider" presents added expenses/device transport issues.
- Non-mechanical dividing methods permitted by the "Rules for Testing Seed" are labor intensive, very detailed, yet not incorporated into adopted Section 4.11.
- The directive to "conduct the purity analysis" is not followed by any instruction regarding how such is to be conducted.
- "Purity analysis" is a highly technical, detailed procedure with strict guidelines under "Rules for Testing Seed."
- Weights and Measures officials are not trained to perform such analyses.

Section 12.4. - Conducting the test

- "…test the pure seed portion from the purity test and record the number of seeds in the sample."

Concerns:

- Above specifies that the count test must be performed using "pure seed from the purity test"
- Again, Weights and Measures officials are not trained or qualified to perform purity analyses. In some states (e.g., California), licensing is required.

Summary of Concerns: The procedures adopted at the 2010 NCWM Annual Meeting require skills and expertise (seed purity analysis) for which Weights and Measures officials are not trained or qualified and the procedure provides no instruction whatsoever regarding how a purity analysis is to be performed. Equipment required (mechanical seed counters and dividers) is very costly and not suited for transport to the field. The adopted

procedures for calibrating the mechanical seed counters do not address the potential for numerous failed tests (exceeding the ± 2 tolerance for a 1,000-seed sample) followed by a single in-tolerance test and do not require repeatability testing to verify that the device is reliable. Any deviations from the mandated procedures and use of required equipment subject Weights and Measures agencies to challenges to the test findings and potential liabilities for taking enforcement actions (e.g., "hold" or "off-sale" orders) in violation of procedures. This item was prematurely approved without consideration of all concerns.

At the 2010 WWMA Annual Meeting, the WWMA L&R Committee recommended that this item move forward as a Voting item.

270 OTHER ITEMS – DEVELOPING ITEMS

INTRODUCTION

The NCWM established a mechanism to disseminate information about emerging issues which have merit and are of national interest. Developing items are those items that have not received sufficient review by all parties affected by the proposals or may be insufficiently developed to warrant review by the NCWM L&R Committee. The Developing items listed are currently under review by at least one regional association, subcommittee, or WG.

The Developing items are marked according to the specific NIST handbook into which they fall – HB 130 or HB 133. The Committee encourages interested parties to examine the proposals included in the appendices and to send their comments to the contact listed in each part.

The Committee asks that the regional weights and measures associations, subcommittees, and WGs continue their work to fully develop each proposal. Should an association, subcommittee, or WG decide to discontinue work on a Developing item, the Committee asks that it be notified. When the status of an item changes because the submitter withdraws the item, the item will be listed in a table below. For more details on items moved from the Developing items list to the Committee's main agenda, refer to the new reference number in the main agenda.

270-1 Fuels and Lubricants Subcommittee (FALS)

Source: The Fuels and Lubricants Subcommittee (FALS)

Purpose: Update the Uniform Engine Fuels, Petroleum Products, and Automotive Lubricants Regulation in HB 130. Another task will be to update the Basic Engine and Fuels, Petroleum Products, and Lubricants Laboratory Publication.

Item Under Consideration: FALS has met since the 2007 Annual Meeting and continues its work on a number of items in addition to preparing a major revision of the Fuel Ethanol Specifications.

Background/Discussion: The Subcommittee met on January 24, 2007, at the NCWM Interim Meeting to undertake a review of a number of significant issues related to fuel standards. Their first project was to undertake a major review and update of the Uniform Engine Fuels, Petroleum Products, and Automotive Lubricants Regulation in HB 130. The Subcommittee also met at the 2007 NCWM Annual Meeting and continued its work on a number of items in addition to preparing a major revision of the Fuel Ethanol Specifications.

An additional project will be to update and possibly expand the Basic Engine Fuels, Petroleum Products, and Lubricants Laboratory Publication. The Subcommittee will undertake other projects as time and resources permit.

At the 2009 NCWM Interim Meeting and Annual Meeting, the FALS Chairman informed the Committee that FALS is working toward getting changes made to the language within the document.

At the CWMA 2009 Interim, the WWMA 2009 Annual, the SWMA 2009 Annual, and the NEWMA 2009 Interim Meetings, there were no comments heard. The Associations recommend that this proposal remain a Developing item.

At the 2010 NCWM Interim Meeting, the FALS Chairman, Mr. Hayes, informed the Committee that FALS is still working on this project. No comments were heard during the open hearings, and the Committee agrees that this item should remain a Developing item.

At the 2010 NEWMA Annual Meeting held in Groton, Connecticut, no comments were heard on this item. The NEWMA L&R Committee recommends that this item remain Developmental.

At the 2010 CWMA Annual Meeting held in Springfield, Illinois, the NIST Technical Advisor provided information that NIST has begun work on the development of a handbook for State fuel laboratories.

At the 2010 NCWM Annual Meeting in St. Paul, Minnesota, a comment from a petroleum representative stated that this item is premature and that action needs to be taken by the EPA. Mr. Hayes, FALS Chairman, clarified that this item is for a laboratory guide and that FALS supports NIST efforts to develop a handbook for state fuel laboratories. The item mentioned by the petroleum representative is for a new proposal that is being submitted through the regions modifying HB 130 as a result of a potential EPA waiver for gasoline containing more than 10 volume percent ethanol.

At the 2010 fall regional meetings, all of the Associations are recommending that this item be a Developmental item.

If you would like to participate in this Subcommittee, contact Mr. Ron Hayes, Chairman Fuels and Lubricants Subcommittee, at (573) 751-2922, e-mail: ron.hayes@mda.mo.gov, or Mr. David Sefcik, NIST at (301) 975-4868, e-mail: david.sefcik@nist.gov.

Mr. John Gaccione, Westchester County, NY, Chairman
Mr. Joe Benavides, Texas
Ms. Jonelle Brent, Illinois
Mr. Raymond Johnson, New Mexico
Mr. Tim Lloyd, Montana

Mr. Ron Hayes, Missouri, Chairman FALS

Mr. Lance Robertson, Canada, Technical Advisor
Mr. Rob L. Underwood, Associate Member Representative

Ms. Lisa Warfield, NIST Technical Advisor: e-mail: lisa.warfield@nist.gov
Mr. David Sefcik, NIST Technical Advisor: e-mail: david.sefcik@nist.gov

Laws and Regulations Committee

THIS PAGE INTENTIONALLY LEFT BLANK