

Executive Summaries from the NIST OWM Analysis of the 2022 NCWM Laws and Regulations (L&R) Annual Meeting Agenda

The NIST OWM Executive Summary is extracted from the NIST OWM Analysis. This provides the OWM community with high level points that summarize the technical aspects and recommendations for the Item Under Consideration. The full NIST OWM Analysis can be viewed at <http://www.nist.gov/pml/weights-and-measures/publications/owm-technical-analysis>. OWM offers these comments and recommendations based upon information and input available as of the date of this report.

Language shown in bold face print by ~~striking out~~ information to be deleted and underlining information to be added. Requirements that are proposed to be nonretroactive are printed in *bold faced italics*.

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(In order by Reference Key)

WAM – UNIFORM WEIGHTS AND MEASURES LAW

WAM-22.2 V Section 11. Powers and Duties of the Director

OWM Executive Summary for WAM-22.2. Section 11. Powers and Duties of the Director

OWM Recommendation: OWM recommends this be Assigned to the Cannabis Task Group to obtain additional information that OWM has recommended in the analysis.

“Cannabis” Statement:

In contrast to hemp, marijuana remains a Schedule I substance under the Controlled Substances Act. NIST does not have a policy role related to the production, sale, distribution, or use of cannabis (including hemp and marijuana). NIST participates in the National Conference of Weights and Measures (NCWM) as part of NIST’s statutory mission to promote uniformity in state laws, regulations, and testing procedures.

- NCWM Bylaws for procedures to modify or add requirements to an existing publication, states “provide evidence of consistency with federal laws and regulations.” Cannabis is a Schedule I substance under the Controlled Substances Act. Schedule 1 substances are considered illegal under federal law.
- This regulation is written for permissive language in a regulation. Section 11. Powers and Duties of the Directors is authoritative, and we recommend the permissive language be removed replaced with language similar to “For those states that have authority to regulate Cannabis and Cannabis-containing Products the Director shall...” In addition, the formatting would align with the formatting but continuing with next alphabetical character.
- If states want to have authority consideration should be given to add a provision to the uniform code and restrict water activity regulation to cannabis. If a legislature adopts that section, they will then have the authority. States cannot expand their authority by simply adopting a regulation.
- Within the section in the previous bullet there are sections that are already specified with Section 11. Power and Duties and do not need to be mentioned a second time. If there is a duplication of language it should be stricken from any newly created section. In some states cannabis is not be legalized for recreation or medicinal purposes. If this is adopted, would it create an issue, if a state adopts a regulation in its entirety?
- The language provides for areas and procedures for the measurement of potency, and measurement of water activity. Currently there are no documented test procedures in NIST HB 133 that provide inspectors with procedures for both of these areas. As addressed in our Technical Analysis, in general, weights and measures inspectors do not enforce ingredient, potency, drug content, safety labeling, and water activity on other products in the marketplace. The Cannabis TG should develop

language on the measurement of cannabis potency and water activity for inclusion into NIST HB133.

- If the Weights and Measures law does not give the state director authority to regulate the types of cannabis labeling, amended language will be required adding the needed authority.
- We stated a number of reasons within our NIST OWM Detailed Technical Analysis for the Committee to survey the states and due to the high importance of this item, we encourage the states to promptly respond. As noted in the Florida letter dated December 2021, they had a 57-question survey that was prepared and sent to the states. With the share of Florida’s survey information, we believe this can expedite the process in obtaining the necessary information that is needed to change a Weights and Measures Law.
- There has been little indication that Directors have sought advisement from their legal counsel that their state’s weights and measures law provide the state director with authority to regulate cannabis labeling. We believe this should be done prior to the adoption of any cannabis related item.

PAL – UNIFORM PACKAGING AND LABELING REGULATION

PAL-22.3 V Section 8.2. Calculation of Area of Principal Display Panel for Purposes of Type Size.

OWM Executive Summary for PAL-22.3 – Section 8.2. Calculation of Area of Principal Display Panel for Purposes of Type Size.

OWM Recommendation: OWM believes this language is fully developed and recommends it as a Voting Item.

There are minor formatting issues:

- Under Section 8.2. subsections (a), (b), and (c) are reflected as new (bold/underscore). These subsections currently appear in NIST Handbook 130.
- Under Section 8.2.(b). the calculation should read ~~25 cm (10 in) × 5 cm (2 in) = 125 cm (20 in²) × 0.40 = 50 cm² (8 in²)~~ 5 cm (2 in) × 25 cm (10 in) = 125 cm² (20 in²) × 0.40 = 50 cm² (8 in²)
- On page 46 of NCWM Publication 16 the language reflected in (c) (lines 22-23) the language “Determination of the principal display panel shall exclude tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles or jars” should not be reflected as new language. The language that is being added is “See Figure 5. Other Shaped Containers.”

MOS – UNIFORM REGULATION FOR THE METHOD OF SALE OF COMMODITIES

MOS-22.3 V Section 2.4. Fireplace and Stove Wood

OWM Executive Summary for MOS-22.3 – Section 2.4. Fireplace and Stove Wood

OWM Recommendation: OWM believes that the National and Regional Meetings have addressed all concerns of the submitter and this Item is fully developed. OWM appreciates Mrs. Ayers for identifying and getting these issues addressed through the Conference.

MOS-22.4 V Section 2.16. Compressed or Liquefied Gasses in Refillable Cylinders

OWM Executive Summary for MOS-22.4. – Section 2.16. Compressed or Liquefied Gasses in Refillable Cylinders

OWM Recommendation: OWM recommends this as a Voting Item

- OWM believes the Item as written is ready for Voting. OWM is recommending the “Purpose” statement be updated to read, “Update the Method of Sale of Commodities Regulation, Section 2.16. Compressed or Liquefied Gasses in Refillable Cylinders to align with new federal requirements, with the exception of the allowable differences for tare weight, which will be addressed pending the outcome of the 2022 NCWM National LPG Survey. In addition, update and clarify terms of unit representations and how to determine volumes of compressed or liquefied gases.
- The NCWM National Survey on 20 lb LPG Cylinders was completed at the end of April. Reports received from states/counties have been sent to our NIST statistician is analyzing and summarizing the data. A final report is expected to be available by the end of the summer.

DOT Pipeline and Hazardous Materials Safety Administration (PHMSA) is discussing with their Chief Counsel’s office whether they believe DOT’s allowable difference between the stamped tare weight and actual tare will preempt current NIST HB130 Method of Sale requirements. Based on the outcome of DOT decision, NIST OWM is working with NCWM to prepare a petition from NCWM to DOT to have the allowable differences reconsidered based on NCWM National Survey results and current states laws that have been in effect for over 30 years.

MOS-20.5 V Section 2.21. Liquefied Petroleum Gas

OWM Executive Summary for MOS-20.5 – Section 2.21. Liquefied Petroleum Gas

OWM Recommendation: OWM recommends this as a Voting Item.

- OWM recognizes that this proposal did not garner enough votes at the 2021 NCWM Annual Meeting and was returned to the Committee.
- OWM recommends that the Committee consider delaying the effective date in Section 2.21.2.(b).

MOS-22.5 V Section 2.31.2.1. Labeling of Grade Required. and 2.31.2.2. EPA Requirements Also Apply.

OWM Executive Summary for MOS-22.5 – Section 2.31.2.1. Labeling of Grade Required. and 2.31.2.2. EPA Labeling Requirements Also Apply.

OWM Recommendation: OWM believes that this has been fully developed through FALS and recommends this as a Voting Item. All four Fall Regional Associations agreed this should be a Voting Item.

- The Item Under Consideration has incorrect formatting applied to it. The following words should appear in bold and underscore format in Section 2.31.2.1. “**Biodiesel and biodiesel blends shall be identified in accordance with EPA and FTC requirements.**”
- At the 2022 CWMA Annual Meeting, Mr. Corr proposed modifications based off information from 15 CFR § 306.0 Definitions and § 306.5 Automotive Fuel Rating. It was unclear if his modifications were considered more than editorial.

NET – HANDBOOK 133: CHECKING THE NET CONTENT OF PACKAGED GOODS

NET-22.2 V 3.X. Volumetric Test Procedure for Viscous and Non-Viscous Liquids by Portable Digital Density Meter.

OWM Executive Summary for NET-22.2 – 3.X. Gravimetric Test Procedure for Viscous and Non-Viscous Liquids by Portable Digital Density Meter.

OWM Recommendation: With the OWM recommended revision to the language, OWM recommends this as a Developing or Assigned to a Task Group.

- OWM has provided a revised copy of the Item Under Consideration with NIST comments and proposed changes in its detailed analysis. OWM has engaged its Lab Metrology program to provide input and feedback in determining and assessing any technical gaps. A copy is also available on the NCWM website under supporting documents.
- The use of this equipment has great potential to facilitate package testing for many viscous and non-viscous liquids, as well as other weights and measures inspection areas. OWM will continue to assist the L&R Committee and the weights and measures community as it works to support the use of this equipment in official inspections.
- Like any standards or test equipment such as test weights, volumetric standards, temperature sensing devices that will be used in regulatory action, it is essential for a weights and measures jurisdiction to validate the traceability of measurements made using the equipment. Results must be “beyond a reasonable doubt.” It is OWM’s opinion this has not been met. Very limited testing has been conducted by the submitter.
- Significant changes have been made to the current item under consideration but only made available to membership one day prior to the start of the 2022 NCWM Interim. Although significant improvements have been made to the test procedure, OWM believes that moving the item forward

OWM Executive Summary for NET-22.2 – 3.X. Gravimetric Test Procedure for Viscous and Non-Viscous Liquids by Portable Digital Density Meter.

as a Voting Item was premature. NIST OWM recommends that more time be provided for OWM and membership to properly review and vet the item.

- One of the greatest concerns is the limited testing analysis provided by the submitter comparing the digital density meter to the current NIST Handbook 133 volumetric test procedure. Data on only five products were submitted which is insufficient to statistically validate results to ensure the test procedure will be defensible for use in official inspections. The NIST OWM Detailed Technical Analysis provides for an in-depth analysis.
- The title to this section is incorrect, it should read 3.X. Gravimetric ~~Volumetric~~ Test Procedure for Viscous and Non-Viscous Liquids by Portable Digital Density Meter.
- The Committee removed the Table X.1. Density Coefficient Factor (Alpha) due to the factors not being validated. The Alpha correction must now be calculated manually using the formula provided in the test procedure. OWM believes adding this table back into the test procedure, with validated correction factors would benefit officials by eliminating manual calculations and simplifying the test procedure.
- The term “viscous” needs to be clearly defined by a numerical value. Adding a step for using a Viscometer to determine the viscosity in before determining the density should be considered. The number of products listed are somewhat exhaustive. OWM recommends that a select few items be targeted that are most likely to be tested by this method. Testing data must be sufficient for each commodity listed.
- Many questions need to still be answered such as the level of accuracy required bases on study, calibration methods including certified reference materials, limitations of the devices use, the number and type of samples that should be tested in order to validate results as compared to current NIST HB 133 procedures, proper procedures for validating a device. and whether adding a step for using a Viscometer to determine viscosity before determining the density is needed.
- OWM recommends that this test procedure be changed from an enforcement test to an audit test procedure. Consideration should be given making this an audit procedure, but additional data and analysis must be done. Before this is determined for use as an enforcement procedure clearer guidance needs to be provided regarding the limitations of these devices as stated in the body of our NIST OWM Detailed Technical Analysis.

OTH – OTHER ITEMS

OTH-22.1 A Uniform Regulation for E-commerce Products

OWM Executive Summary for OTH-22.1 – Uniform Regulations for E-commerce Products

OWM Recommendation: We concur that this item has merit and should be assigned to PALS.

OWM Executive Summary for OTH-22.1 – Uniform Regulations for E-commerce Products

OWM supports the continued work and development of this item through PALS. OWM had submitted suggestions, edits, formatting changes, and clarifications on May 24, 2022, to PALS for this item including development of a table of contents, clarification of application and purpose of the regulation, a suggestion to provide more uniformity in like terms used, suggestions to provide relevant examples in certain sections for clarification, revisiting the requirements for bulk sales, among others.

OWM also recommends PALS consider revising the of title of the regulation so that it is more reflective of the content of the regulation beyond labeling (e.g., pricing, unit pricing, graphic illustrations.)

OWM agrees that stakeholder outreach is needed. OWM will assist PALS in reaching out to stakeholders once they are determined by PALS. PALS Chair submitted an updated proposal dated April 12, 2022, which can be found on the NCWM website under supporting documents.

ITEM BLOCK 1 (B1) HB 130, UPLR, SEC. 2.8. MULTIUNIT PACKAGE. HB 133 MODIFY “SCOPE” FOR CHAPTERS 2 – 4, ADD A NOTE FOLLOWING SECTIONS 2.3.7.1. AND 2.7.3., CREATE A CHAPTER 5. SPECIALIZED TEST PROCEDURES AND HB133 APPENDIX F. GLOSSARY

- B1: PAL-19.1 V Section 2.8. Multiunit Package
- B1: NET-19.1 V Section 1.2.4. Maximum Allowable Variation
- B1: NET-19.2 V Modify “Scope” for Chapters 2 – 4, and a note following Section 2.3.7.1. Maximum Allowable Variation (MAV) Requirement and 2.7.3. Evaluation of Results – Compliance Determinations
- B1: NET-19.3 V Create a Chapter 5, Specialized Test Procedures
- B1: NET-19.4 V Appendix F. Glossary

OWM Executive Summary for Item Block 1 (B1)–HB 130, UPLR, Sec. 2.8. Multiunit Package. HB 133 Modify “Scope” for Chapters 2 – 4, Add a Note following Sections 2.3.7.1. AND 2.7.3., Create a Chapter 5. Specialized Test Procedures and HB133 Appendix F. Glossary

OWM Recommendation: OWM believes these items are fully developed and recommends this as a Voting Item. We do encourage that states perform inspections using this Specialized Test Procedures and share any of their concerns with NCWM and OWM.

ITEM BLOCK 2 (B2) COMMERCIAL AND LAW ENFORCEMENT EQUIPMENT

- B2: WAM-22.1 V Section 1.11. Commercial and Law Enforcement Equipment
- B2: NTP-22.1 V Section 2.15. Commercial and Law Enforcement Equipment

OWM Executive Summary for Item Block 2. Commercial and Law Enforcement Equipment
OWM Recommendation: OWM commends the L&R and S&T Committees for working in a collaborative effort to address memberships concerns. OWM believes this Item is fully developed and recommends this as a Voting Item.

ITEM BLOCK 3 (B3) CANNABIS

- B3: PAL-22.1 V Section 2. Definitions 2.XX. *Cannabis* and *Cannabis-Containing Products*.
- B3: PAL-22.2 V Section 10. Requirements, 10.XX. *Cannabis* and *Cannabis-Containing Products*.
- B3: MOS-22.2 V Section 1.XX. *Cannabis* and *Cannabis-Containing Products* and 2.XX. *Cannabis* and *Cannabis-Containing Products*.
- B3: NET-22.1 A HB133, Section 1.2.6. Deviations Caused by Moisture Loss or Gain and Section 2.3.8. Table 2-3 Moisture Allowances.

OWM Executive Summary for Block 3. Cannabis
<p>OWM Recommendation: OWM recognizes the importance of this work and the progress the TG has made thus far. However, there are some significant issues that need to be addressed before this block of items is ready for adoption.</p> <p>OWM recommends this block be designated “Assigned” to the Cannabis TG in order for them to obtain additional information and further develop. OWM has outlined a number of areas requiring additional work in the OWM Executive Summary and OWM Detailed Technical Analysis (below) and states may have additional areas that need to be addressed.</p> <p>“Cannabis” Statement:</p> <p>In contrast to hemp, marijuana remains a Schedule I substance under the Controlled Substances Act. NIST does not have a policy role related to the production, sale, distribution, or use of cannabis (including hemp and marijuana). NIST participates in the National Conference of Weights and Measures (NCWM) as part of NIST’s statutory mission to promote uniformity in state laws, regulations, and testing procedures.</p> <ul style="list-style-type: none">• OWM continues to encourage the Cannabis TG reach out to State Cannabis Commissions, Medicinal Programs, Health Departments, and other State Cannabis Regulatory authorities to work collaboratively to develop language that is acceptable to all stakeholders. There are approximately 22 states that have labeling laws or regulations.

OWM Executive Summary for Block 3. Cannabis

- To inform stakeholders of any developments by the TG, OWM recommends the TG provide a summary to appear in the NCWM Publications. It should be clarified if this TG reports to the NCWM L&R Committee or NCWM Board of Directors.

Form 15's submitted by the Cannabis TG include the following statements. OWM comments are included with each point.

- "W&M does not regulate quality. To the extent establishing an acceptable water activity range is monitoring quality, this is a positive by-product of monitoring equitable transactions, promoting health and safety and preventing diversion."
- **OWM Comment:** *Weights and measures strives for equity in the marketplaces but has not been involved with the health and safety side of commodities.*
- "Equipment cost. The additional cost of water activity meter(s) should not be prohibitive. It could be easily offset by the revenue that would be saved by preventing over drying and diversion and/or by fees collected. This could be accomplished by random testing of Cannabis flower throughout the manufacturing and distributions processes. It should also be noted that setting a water activity standard in the MOS does not establish testing requirements nor frequency of testing requirements."
- **OWM Comment:** *Many states' package inspection activities are not fee-supported and would not be generating income by charging fees for services.*

B3: PAL-22.1. – Section 2. Definitions, 2.XX. Cannabis and Cannabis-Containing Products

- Section 2 Definitions define terms as they are used in the UPLR; these are not intended to define commodities in the marketplace. The Committee would not want to set a precedent to defining commodities.
- "Cannabis" has a known standard of identity; it is not necessary to add a definition to the handbook.
- Definitions should have the proper terminology used for delta-9 by including the term tetrahydrocannabinol followed by (THC) (delta-9 tetrahydrocannabinol (THC))

B3: PAL-22.2. – Section 10. Requirements, 10.XX. Cannabis and Cannabis-Containing Products

- OWM had previously noted our concerns with "*Cannabis*" being italicized. Is it a requirement that this term "Cannabis" appear an italics style for packaging and labeling requirements? If so, OWM recommends the Committee add the statement to (a)(2); "the term *Cannabis* shall appear in capitalization and italics style." If it is not a requirement the capitalization and italics format must be removed to avoid confusion in labeling requirements.
- OWM recommends the following formatting change to provide clarity to make it easier to follow and apply.

OWM Executive Summary for Block 3. Cannabis

These recommendations also correct grammar (i.e., line 14 states “less that” rather than “less than” and subsection (b) uses the term “marketed” rather than “labeled”).

10.XX. Cannabis and Cannabis-Containing Products – A Cannabis or Cannabis-containing product that is intended for human or animal consumption or application, the following information shall appear on the outside of the package:

(a) On the principal display panel

- (1) a statement “Contains Cannabis”;**
- (2) a statement with either “contains less than 0.3 % total delta-9 THC” or “contains 0.3 % or more total delta-9 THC”; and**

(b) On the back or side panel

- (1) a declaration of the labeled cannabinoid per serving or application; and**
- (2) the quantity declaration shall be in terms of milligrams.**

B3: MOS-22.2 Section 1.XX Cannabis and Cannabis-Containing Products and 2.XX Cannabis and Cannabis-Containing Products

OWM does not concur that a method of necessary for this commodity. The Weights and Measures Law, Section 16. Method of Sale which specifies:

Section 16. Method of Sale

Except as otherwise provided by the Director or by firmly established trade custom and practice,

- (a) commodities in liquid form shall be sold by liquid measure or by weight; and
- (b) commodities not in liquid form shall be sold by weight, by measure, or by count.

The method of sale shall provide accurate and adequate quantity information that permits the buyer to make price and quantity comparisons. (Amended 1989)

- If the Committee proceeds with language for a method of sale it is not necessary to list example of product types for each unit of measure. These examples should be stricken from the language

B3:NET-22.1. HB133, Section 1.2.6. Deviations Caused by Moisture loss or Gain and Section 2.3.9. Table 2-3 Moisture Allowances.

OWM does not concur with adding a 3 % weight variance.

- The 3% was assigned by the Cannabis TG; the TG based this value on other known commodities stated within NIST HB 133 Table 2-3 Moisture Allowance and to align with California regulations.

OWM Executive Summary for Block 3. Cannabis

The Moisture Loss WG has not shared any moisture allowance data with the Cannabis TG or L&R Committee.

- OWM recognizes that there was only one member of the Cannabis TG Moisture Loss WG. We encourage those other members to join this group, submit data, and reach consensus on bringing language forward to the L&R Committee. In 1988, NCWM Task Force developed the Guidelines for NCWM Resolution of Requests for the Recognition of Moisture Loss in Other Packaged Foods in NIST Handbook 130 NCWM Policy, Interpretations and Guidelines Section 2.5.6. we encourage the Cannabis Moisture Allowance WG to follow this guidance.
- The form 15 submitted by the Cannabis TG states “For the fairness and safety of Cannabis consumers, a 3 % ± weight variance based on enforcement of acceptable moisture range needs to be established. A 3 % allowance aligns with other known commodities and with California regulations that outline ± 3%. There has been no data reviewed from the California regulations to ensure the accuracy of this number. It is believed the 3 % was a number that California is using only to initiate inspections and obtain data before finalizing their number.
- Section 2.XX.X. Water Activity speaks about “unprocessed” Cannabis but does not define what this means and there is no reference within ASTM D8197. With the Water Activity incorporated within the Method of Sale the sentence should have the terms “kept, offered, or exposed, sold, bartered, or exchanged, or ownership transfers” stricken from the proposal.
- Water Activity is not related to Moisture Allowance. Water Activity should not be placed into the Moisture Allowance Table 2-3 within NIST HB 133. Doing so will only cause confusion.
- Water Activity is used to measure the growth of microbes using ASTM D8196-20, Standard Practice for Determination of Water activity (a_w) in Cannabis, helping to ensure its safety. It is also used to identify the potency (THC level). In many states water activity testing would be conducted by an agency, other than weights and measures. Outside of fuel quality most weights and measures programs do not inspect and enforce quality and safety of most consumer commodities.

The Committee should consider the development of a NIST HB133 – Chapter 5 test procedure for determining moisture allowance if the MOS is adopted with criteria for Water Activity.

ITEM BLOCK 4 (B4) EPA CFR REFERENCE UPDATES

- B4: MOS-22.1 V Section 2.20.2. Documentation for Dispenser Labeling Purposes. and 2.20.3. EPA Labeling Requirements.
- B4: FLR-22.1 V Section 2.1.2. Gasoline-Ethanol Blends., 3.2.5. Documentation for Dispenser Labeling Purposes, and 3.2.6. EPA Labeling Requirements.

OWM Executive Summary for Item Block 4. EPA CFR Reference Updates.

OWM Recommendation: OWM is recommending a minor editorial change that was raised at the 2022 CWMA Annual Meeting to the title of Section 2.20.

- This does not reflect the full language of Section 2.20. The title of Section 2.20. Gasoline-Oxygenate Blends. Mr. Corr is recommended at the CWMA 2022 Annual Meeting that the title read, “Gasoline and Gasoline-Oxygenate Blends.

ITEM BLOCK 6 (B6) TRANSMISSION FLUID

- B6: MOS-21.1. A Section 2.36.2. Labeling and Identification of Transmission Fluid
- B6: FLR-21.2. A Section 3.14.1. Labeling and Identification of Transmission Fluid

OWM Executive Summary for Section Item Block 6 Transmission Fluid

NOTE: The original submitter of this Item was Missouri Department of Agriculture. The source should read the Fuels and Lubricants Subcommittee. OWM supports the continued work of Transmission Fluid Focus Group.

OWM Recommendation: OWM recommends this as Assigned Item.