V. Examination Procedure for Price Verification

as adopted by

The National Conference on Weights and Measures\*

###### A. Background

The NCWM established the Price Verification Working Group in 1993 to respond to public concern about price accuracy in retail stores. More than 500 retailers, consumer representatives, and state and local weights and measures officials participated in the development of the procedure. It was adopted by the NCWM at the 80thAnnual Meeting in 1995.

The procedure applies to all retail stores, including food, hardware, general merchandise, drug, automotive supply, convenience, and club or other stores. Model inspection reports are included to promote the collection of uniform data. The model reports and uniform procedures will serve as the foundation for the collection and summarization of price accuracy data on a national basis. This information may be used to provide reliable information on price accuracy with a national perspective. The procedure provides administrators with the tools, guidance, and background information, as well as uniform test procedures and enforcement practices, to enhance the economic well-being of consumers and retail businesses in their jurisdiction. By implementing this program in cooperation with industry, officials will help to restore and maintain consumer confidence in retail pricing practices and technologies, such as scanners, and provide economic benefits for consumers and the business community.

###### B. Status of Promulgation

The Examination Procedure for Price Verification was recommended for adoption by the Conference in 1995. The table beginning on page 10 shows the status of adoption of the procedure.

\*The National Conference on Weights and Measures (NCWM) is supported by the National Institute of Standards and Technology (NIST) in partial implementation of its statutory responsibility for “cooperation with the states in securing uniformity in weights and measures laws and methods of inspection.”

THIS PAGE INTENTIONALLY LEFT BLANK

**Examination Procedure for Price Verification**

**Table of Contents**

**Section** **Page**

[Section 1. Scope 201](#_Toc400625234)

[Section 2. Definitions 201](#_Toc400625235)

[2.1. Area. 201](#_Toc400625236)

[2.2. Cents-off Representation. 201](#_Toc400625237)

[2.3. Direct-Store-Delivery (DSD) Item. 201](#_Toc400625238)

[2.4. Displays. 201](#_Toc400625239)

[2.5. Hand-held Scanning Device. 201](#_Toc400625240)

[2.6. Enforcement Levels. 201](#_Toc400625241)

[2.7. Inspection Types. 202](#_Toc400625242)

[2.8. Inspection Frequency. 202](#_Toc400625243)

[2.9. Inspection Lot. 202](#_Toc400625244)

[2.10. Merchandise Group. 202](#_Toc400625245)

[2.11. Not-on-File Item. 202](#_Toc400625246)

[2.12. Notification of Noncompliance. 202](#_Toc400625247)

[2.13. Price Look-Up Code (PLU). 202](#_Toc400625248)

[2.14. Prices. 203](#_Toc400625249)

[2.15. Pricing Coordinator. 203](#_Toc400625250)

[2.16. Pricing Integrity. 203](#_Toc400625251)

[2.17. Sample. 203](#_Toc400625252)

[2.18. Scanner. 203](#_Toc400625253)

[2.19. Stock-Keeping Unit (SKU). 203](#_Toc400625254)

[2.20. Store-Coded Item. 203](#_Toc400625255)

[2.21. Stop-Sale Order. 203](#_Toc400625256)

[2.22. Ticketed Merchandise. 203](#_Toc400625257)

[2.23. Universal Product Code (UPC). 203](#_Toc400625258)

[Section 3. Test Notes 204](#_Toc400625259)

[3.1. Safety and Health. 204](#_Toc400625260)

[3.2.  Confidentiality of Findings. 204](#_Toc400625261)

[Section 4. Materials and Equipment 204](#_Toc400625262)

[Section 5. Pre-Inspection Tasks 204](#_Toc400625263)

[Section 6. Inspection 205](#_Toc400625264)

[6.1. Position of Equipment. 205](#_Toc400625265)

[6.2. Other. 205](#_Toc400625266)

[Section 7. Test Procedures 205](#_Toc400625267)

[7.1. Application of Sampling Plans. 205](#_Toc400625268)

[7.2. Table 1. Samples, Sample Collection, and Accuracy Requirements. 205](#_Toc400625269)

[7.2.1. How to Use the Table 205](#_Toc400625270)

[7.2.2. Samples. 206](#_Toc400625271)

[7.3. Sample Collection Procedures (for use with either manual or automated inspection procedures). 206](#_Toc400625272)

[7.3.1. Randomized Sample Collection. 208](#_Toc400625273)

[7.3.1.1. Example 1. Illustrations of the Randomized Sampling Procedure. 208](#_Toc400625274)

[7.3.2. Stratified Sample Collection. 212](#_Toc400625275)

[7.3.2.1. Example 2. Two-Stage Manual Inspection using the Stratified Sampling Procedure. 213](#_Toc400625276)

[7.4.  Procedures for Test Purchases, Investigation of Consumer Complaints, and for Verification of Manually Entered Prices. 216](#_Toc400625277)

[7.4.1. Procedure. 216](#_Toc400625278)

[7.4.2. Alternative Procedure - Consumer Complaints. 217](#_Toc400625279)

[7.4.3.  Evaluation of Results. 217](#_Toc400625280)

[Section 8. Documentation of Findings 217](#_Toc400625281)

[Section 9. Evaluation of Inspection Results 217](#_Toc400625282)

[9.1. Definition of Errors. 217](#_Toc400625283)

[9.2. Computing Sample Errors. 218](#_Toc400625284)

[Section 10. Accuracy Requirements 218](#_Toc400625285)

[10.1. Accuracy Requirements. 218](#_Toc400625286)

[10.2. Accuracy. 218](#_Toc400625287)

[10.3. Ratio of Overcharges to Undercharges. 218](#_Toc400625288)

[Section 11. Enforcement Procedures 219](#_Toc400625289)

[11.1. Enforcement Steps. 219](#_Toc400625290)

[11.2. Model Enforcement Levels. 220](#_Toc400625291)

[Section 12. Post-Inspection Tasks 221](#_Toc400625292)

[Section 13. Supervisory Activities 221](#_Toc400625293)

[13.1. Baseline Surveys. 221](#_Toc400625294)

[13.2. Follow-up Inspections. 221](#_Toc400625295)

[13.3. Management Information Systems. 222](#_Toc400625296)

[Section 14. Model Forms for Price Verification Inspections 222](#_Toc400625297)

**Examination Procedure for Price Verification**

Section 1. Scope

These procedures may be used to conduct price verification inspections in any type of store, including those that use Universal Product Code (UPC) scanners and price-look-up codes at the check-out counter as a means for pricing. Procedures are included for test purchases and verifying manual entries. The purpose of the procedure is to ensure that consumers are charged the correct price for the items they purchase. The “randomized” and “stratified” sampling procedures are intended for use in routine inspections to determine how well a store is maintaining price accuracy. Nothing in this procedure should be construed or interpreted to redefine any state or local law or limit any jurisdiction from enforcing any law, regulation, or procedures that relates to the accuracy of advertisements of retail prices, or any other legal requirement.

Section 2. Definitions

2.1. Area. – “Entire store,” a “department,” “grouping of shelves or displays,” or other “section” of a store as defined by the inspector from which samples are selected for verification. “Non-public” areas of a store are not included (e.g., the area in a pharmacy where controlled drugs are kept or product store rooms).

2.2. Cents-off Representation. – Any printed matter consisting of the words “cents off” or words of similar import placed upon any item or on a label affixed or adjacent to an item, stating or representing by implication that it is offered for sale at a lower price than the ordinary and customary retail selling price (e.g., 15 % off, bonus offers, 2 for 1, or 1‑cent sales, etc.).

2.3. Direct-Store-Delivery (DSD) Item. – An item delivered to a store, and usually priced, by route salespeople (e.g., milk, beer, soft drinks, bread, and snack foods).

2.4. Displays.

(a) **Aisle Stacks or End-of-Aisle Displays.** – Displays located in freestanding units or attached at the end of or adjacent to a tier of shelves.

(b) **Tie-in Displays.** – Displays of related products at secondary locations in a store (e.g., barbecue sauce on shelves in an aisle that may also be simultaneously displayed in the meat department of a food store).

(c) **Multiple Displays.** – Displays of the same product at several locations in a store.

2.5. Hand-held Scanning Device. – A portable device that scans UPC codes and also allows for the comparison of the price displayed on a shelf, item, or otherwise advertised to the price for the item in the point-of-sale database.

***NOTE:*** *These devices either retain a “batch” file of entered prices and identities for later comparison to the database or operate “on-line” via FM radio to the database. When used for price verification, they shall only be used with the active point-of-sale database. If you use a hand-held scanner, verify all price discrepancies by scanning the item at a check-out register and request a printed receipt to document the price that consumers would be charged.*

2.6. Enforcement Levels.

***NOTE****: These recommendations are not intended to modify the enforcement policy of any jurisdiction unless they are adopted by the jurisdiction.*

(a) **Lower levels of enforcement actions.** – Includes increased inspection frequency, stop-sale or correction orders, warning letters, and other notifications of noncompliance.

(b) **Higher levels of enforcement actions.** – Includes issuance of citations, administrative hearings, civil penalties, or prosecution under criminal statutes.

2.7. Inspection Types.

(a) **Automated Inspection.** – Inspections that are conducted using a hand-held scanning device.

(b) **Manual Inspection.** – Removing items from displays and taking them to a check-out terminal to verify the price (e.g., select the items and either (1) take them to a check-out terminal for scanning or (2) record the product identity, UPC number, and shelf price for each package on an inspection report) and then manually entering the UPC numbers in the register. The manual entries may be made by the official or by a store employee.

2.8. Inspection Frequency.

*These recommendations do not modify the inspection policy of any jurisdiction unless adopted by the jurisdiction.*

***Inspection Control.***– *After a program has been in place for a period of time and a database is established, procedures can be developed to randomly select stores for inspection, or to focus inspections on stores with low levels of compliance.*

(a) **Normal Inspection Frequency.** – An inspection made at the customary time interval used by an enforcement agency. Inspections may be conducted during normal business hours. Stores under this normal frequency should be inspected semi-annually or annually.

(b) **Increased Inspection Frequency.** – An inspection made more often than with the customary time interval, usually as a follow-up on prior violations. Inspections may be conducted during the normal business hours. Stores under this increased frequency should be inspected on a quarterly, bi-monthly, or more frequent basis.

(c) **Term of Increased Inspection Frequency.** – A store placed on an increased inspection frequency shall remain at that frequency until there are two consecutive inspections with an accuracy of 98 % or higher.

(d) **Special Inspection.** – An inspection that is conducted as a follow-up to a prior inspection or to investigate a complaint.

2.9. Inspection Lot. – A group of items available for testing in an “area” or “areas.” (See 2.1. “Area.”)

2.10. Merchandise Group. – A group of products identified under a common heading for inspection purposes only (e.g., “advertised sale” items, “end-of-aisle” items, “direct delivery” items, “cents-off” items, or all the items in the “men’s” department in a department store).

2.11. Not-on-File Item. – Items not found in the point-of-sale database. When found, another item is selected at random (e.g., an item on either side of the one that was not on file) to replace the item in the sample. A “not-on-file” item is not an error unless you determine that the price “charged” for the item is incorrect by conducting a test purchase or by asking the check-out clerk to determine the price by using the store’s written or stated policy or procedures. If the price is found to be inconsistent, the error is included in the total.

2.12. Notification of Noncompliance. – Any written notice given to a store describing the violations of the law that were found.

2.13. Price Look-Up Code (PLU). – A pricing system where numbers are assigned to items or commodities, and the price is stored in a database for recall when the numbers are manually entered. PLU codes are used with scales, cash registers, and point-of-sale systems.

2.14. Prices. – These definitions do not amend or effect the provisions of any law, regulation, or other test procedure.

(a) **Misrepresented Price.** – The price charged differs from the price at which the item is offered, exposed, or advertised for sale, or that the price is different from the price on the item, shelf label, or sign.

(b) **Price Charged.** – The price charged for an item and either displayed on the automated device or on the receipt issued by the device, whether the item is scanned or actually purchased, the device is computing or recording while in a training or inspection mode, or by using the hand-held device tied to the point-of-sale database.

(c) **Overcharge.** – The price charged for an item is more than the lowest advertised, quoted, posted, or marked price.

(d) **Undercharge.** – The price charged for an item is less than the lowest advertised, quoted, posted, or marked price.

(e) **Intentional Undercharge.** – Undercharges are not counted as errors if the store provides, at the time of inspection, information that confirms that the price error was intentional (e.g., an undercharge that occurs when a store lowers a price in a database before it changes shelf tags or signs in anticipation of selling the item at a lower price, or when a store increases the price or advertised price of an item, and then increases the price in the database, or when a discounted price is rounded to a lower value).

2.15. Pricing Coordinator. – The individual designated by the store to control and maintain “pricing integrity” in the store, although the title will differ among retailers.

2.16. Pricing Integrity. – Ensuring that the computer price file and/or the price charged to consumers at a cash register is the same price that is marked on the product, in an advertisement, and/or the shelf tag.

2.17. Sample. – The number of items selected for testing from the inspection lot.

2.18. Scanner. – An electronic system that employs a laser bar code reader to retrieve product identity, price, and other information stored in computer memory.

2.19. Stock-Keeping Unit (SKU). – A system of product identity and pricing similar to PLUs.

2.20. Store-Coded Item. – The application of UPC codes to items in the store. Scales in the meat, deli, and other departments generate UPC labels that include identity and price information that can be read by point-of-sale scanners.

2.21. Stop-Sale Order. – An official document placing a package or an amount of any commodity off-sale, that is offered or exposed for sale in violation of the law.

2.22. Ticketed Merchandise. – Items from which the price must be read from a ticket (or price sticker) and manually keyed into a register.

2.23. Universal Product Code (UPC). – A unique symbol that consists of a machine readable code and human-readable numbers. UPCs are printed on package labels or are applied with tags or labels. UPC codes may be printed for random weight packages by price computing scales. UPC symbols must meet the standards established by the GS1 US (formerly the Uniform Code Council [UCC]) in order for them to “scan” accurately. The size and clarity of the print and clear area surrounding the symbol are just a few of the factors that affect accuracy. The GS1 US issues codes and answers technical questions. For more information, contact GS1 US, at 7887 Washington Village Drive, Suite 300, Dayton, OH 45459, telephone: (937) 435‑3870, FAX (937) 435-7317, or e-mail [info@gs1us.org](mailto:info@gs1us.org). You can visit them on the web at [www.gs1us.org](file:///G:\NIST\HB%20130,%202013\Final%20Files%20for%20PDF\www.gs1us.org).

Section 3. Test Notes

3.1. Safety and Health. – Practice safe work habits to avoid personal injuries or property damage. Be aware of and follow all safety or sanitation rules at the inspection site. Handle perishable, dairy, or frozen products properly to avoid damage (e.g., avoid defrosting frozen foods or allowing dairy products to warm to room temperature that may result in spoilage).

3.2.  Confidentiality of Findings. – Inspection findings should be discussed only with an authorized store representative and released only in accordance with applicable public records laws.

Section 4. Materials and Equipment

The following materials and equipment are recommended for use in conducting the inspections in this procedure:

Inspection report:

* Copy of laws or regulations
* Hand-held counter or Price Verification Tally Sheets
* 1 lb (or 1 kg) test standard
* Merchandise cart (if required and available)

Other equipment and materials provided by the store when available:

* Current newspaper advertisement or store sales brochures
* Hand-held scanning device(s) – Stores are not required to have this equipment or to make it available for your use. However, many stores use this equipment to maintain price integrity and may make it available for your use on request.

Section 5. Pre-Inspection Tasks

Prior to conducting an inspection, it is recommended that you contact the store management, identify yourself, and explain the purpose of your visit. Determine if there are any health, sanitation, or safety rules. If requested, provide information on the law or the inspection procedure.

***NOTE:***  *When verifying manual price entries or conducting test purchases, store management is typically not notified of the test until the items have been totaled and the transaction completed.*

(a) Notify store representatives that they are invited to participate in the inspection.

(b) If the store makes a hand-held scanning device available for use, request instructions on how to operate it properly. It is acceptable for the “pricing coordinator” to operate the scanning device and participate in the inspection.

(c) If you use the manual inspection procedure, advise the store representative that you will return the merchandise to its display location unless the store representative wants to restock the items, which is acceptable. Determine which check-out location to use. Arrange to have the register set so that the items you verify are not included in sales records.

(d) Conduct inspections in a manner that does not disrupt normal business activities.

Section 6. Inspection

Perform the following inspections:

6.1. Position of Equipment. – Determine if customer indications on point-of-sale systems meet NIST Handbook 44, General Code, User Requirement, 3.3. Position of Equipment. A device equipped with a primary indicating element and used in direct sales shall be so positioned that its indications may be accurately read and the weighing and measuring operation may be observed from some “reasonable” customer position.

NIST Handbook 44 defines “point-of-sale system” as an assembly of elements including a weighing element, indicating element, and a recording element (and may be equipped with a scanner) used to complete a direct sale transaction.

***NOTE:*** *The importance of consumer* access *to the cash register display of product information and price cannot be overstated. If consumers cannot verify prices as the items are being scanned, they must wait until the transaction is completed (i.e., they must pay by cash, check, or credit card) before they receive the receipt and can confirm the prices charged for the items.*

6.2. Other.

(a) If you use a cash register, verify the accuracy and legibility of information provided on register’s receipts.

(b) Conduct inspections to enforce local requirements if your jurisdiction has specific laws or regulations relating to price marking, shelf labels, or unit pricing.

Section 7. Test Procedures

These procedures shall be used to conduct inspections in any type of store, whether the store uses scanners or automated price look-up registers, or where a clerk manually enters the prices.

7.1. Application of Sampling Plans.

(a) For normal or increased frequency inspections, follow the procedures referred to in Columns 1, 2, and 3 in Table 1. Samples, Sample Collection, and Accuracy Requirements.

(b) For special inspections, use the test procedures in Section 7.2. Table 1. Samples, Sample Collection, and Accuracy Requirements or 7.4. Procedure for Test Purchases and for Verifying Manually Entered Prices.

7.2. Table 1. Samples, Sample Collection, and Accuracy Requirements.

**7.2.1. How to Use the Table:**

(a) Look in Column 1 for the type of store you are inspecting; select the appropriate sample size from Column 2; then refer to Column 3 for the type of sample collection plan to use.

(b) Follow the single-stage or two-stage sampling plans to conduct the inspection and collect the samples using either the “randomized” or “stratified” sample collection procedures described in Section 7.3. Sample Collection Procedures or the procedure in Section 7.4. Procedure for Test Purchases and for Verifying Manually Entered Prices.

(c) Apply the accuracy requirements for the appropriate sample size in Column 4.

**7.2.2. Samples.** – Refer to Column 2 in Table 1. Samples, Sample Collection, and Accuracy Requirements to determine how many items to select for the store type and whether to use the single-stage or two-stage sampling plan. You may use either:

(a) **Single-Stage Sample.** – A single-stage sample is typically used for, but is not limited to, stores where a hand-held scanner device is available for the inspection; or

(b) **Two-Stage Sample.** – A two-stage sample saves time. If the sample (usually one-half the total sample size) taken in the first-stage meets the accuracy requirements specified in Column 4 in Table 1. Samples, Sample Collection, and Accuracy Requirements, the inspection is complete. However, if the errors in the first-stage sample fall within the limits set in Column 4, the second-stage of the sample is taken.

7.3. Sample Collection Procedures (for use with either manual or automated inspection procedures). – These sample collection procedures may be used to conduct either manual or automated inspections with a single-stage or two-stage sample. That is, you can either use a hand-held scanning device to verify the price of an item (automated), or you can remove the items from display and take them to a check-out location to verify the price of the item (manual) regardless of which sample collection procedure is used. No sample collection procedure is ideal for all retail store arrangements. You can modify the procedure to fit each store, but you should adhere to the sample size and sample collection procedures described in Table 1. Samples, Sample Collection, and Accuracy Requirements. When using any of the procedures, test the store as a whole unit by taking samples from all parts of the store, or divide the store into “areas” and select samples from several “areas” (e.g., at least 10 areas, or one-third or one-half of the “areas”).

|  |  |  |  |
| --- | --- | --- | --- |
| **Table 1.**  **Samples, Sample Collection, and Accuracy Requirements** | | | |
| **Column 1.**  **Type of Store** | **Column 2.**  **Samples** | **Column 3.**  **Sample Collection Procedures** | **Column 4.**  **Accuracy Requirements**  **(See Section 10)** |
| Convenience or Any Other Small Retail Store  **NOTE:** For this procedure, a small store is typically one with three or fewer check-out registers. | Two-Stage Sample:  First Stage = 25 items  Second Stage = 25 items or more  Total = 50 items or more  or  Single-Stage Sample:  50 items or more | Use the Randomized Sample Collection in 7.3.1 or the Stratified Sample Collection in 7.3.2.  and  Use Manual or Automated Inspection Procedures  **NOTE:** Test the store as a whole unit by taking samples from all “areas” of the store,  or  divide the store into “areas” and select samples from several “areas” (e.g., at least 10 or one-third of the “areas”) | If 1 error is found in the 25‑item sample, test an additional 25 items.  If more than 1 error is found in the 50‑item sample, the store fails.  **NOTE:** If more than 1 error is found in the first 25 items, the store fails. |
| All Other Retail Stores | Two-Stage Sample:  First Stage = 50 items  Second Stage = 50 items or more  Total = 100 items or more | If 1 error is found in the 50‑item sample, the store passes.  If 2 errors are found in the 50‑item sample, test an additional 50 items.  If more than 2 errors are found in the 100 item sample, the store fails.  **NOTE:** If more than 2 errors are found in either stage, the store fails. |
|  | Single-Stage Sample:  100 or more items | If more than 2 errors are found in the 100‑item sample the store fails; or  If more than 100 items are sampled, the error rate shall not exceed 2 %. |

***NOTE 1:*** *These sampling procedures allow flexibility in sample collection for use in any type or size of store. You can take several different approaches and select a number of “areas” to sample using the sample sizes in Table 1. For example, to perform a 100-item inspection in a department store with 20 “areas,” you can either verify 5 items in an “area,” 10 items in each of 10 “areas,” or 20 items from each of 5 “areas.”*

***NOTE 2:*** *The sample sizes used for routine inspections in this procedure should not be used to estimate the overall accuracy of prices in a store.*

***NOTE 3:*** *In some stores, price reductions are not programmed into the point-of-sale system. Instead, discounts are manually entered by a sales clerk; however, the sales clerks should have a means of identifying a sale item. When conducting normal inspections, verify the price of the sale items by allowing the sales clerk to determine the price of the item using the store’s customary procedures. This will ensure that the customer receives the correct price regardless of the location where the check-out occurs.*

**7.3.1. Randomized Sample Collection.** – In “randomized” sample collection, all items in an “area” have an equal chance of being included in the sample. This test procedure has several benefits, including: (1) having more effective coverage and being simpler to conduct because you select items by count following a systematic pattern throughout the store, and (2) ensuring that a wider range of items are verified, which increases scrutiny; therefore, there is greater confidence in the results. With most samples, several items will be verified in each “area” of the store. Since store sizes differ, this number will vary, but samples should be taken from a wide variety of items (and merchandise groups) from locations throughout the store or “area.”

The steps of the randomized sampling collection procedure are as follows:

(a) Count the number of “areas” in the store which have products to be verified:

(1) Stand-alone counters and displays or whole departments (e.g., bakery or seafood, or “men’s clothing” or “sporting goods” department, etc.) are considered and counted as individual “areas” to be sampled.

(2) End of aisle displays may be considered as a single, distinct “area” and either verified separately or included as part of one side of an aisle.

(b) The sample size (e.g., 100 items) is divided by the number of “areas” to determine the number of items to be sampled from each “area.” Depending on the number of areas in the store, you may calculate a fractional number of items per area. In this case, round off the sample size and select one or two additional items from an “area” to complete the full sample size of 100 items.

7.3.1.1. Example 1. Illustrations of the Randomized Sampling Procedure.

1. Figure 1 illustrates how the randomized sampling procedures are used in a food store. This example is based on a 100‑item sample. To simplify the selection process, simply divide the store into 4 major “areas” and select samples as follows:

**Examples:**

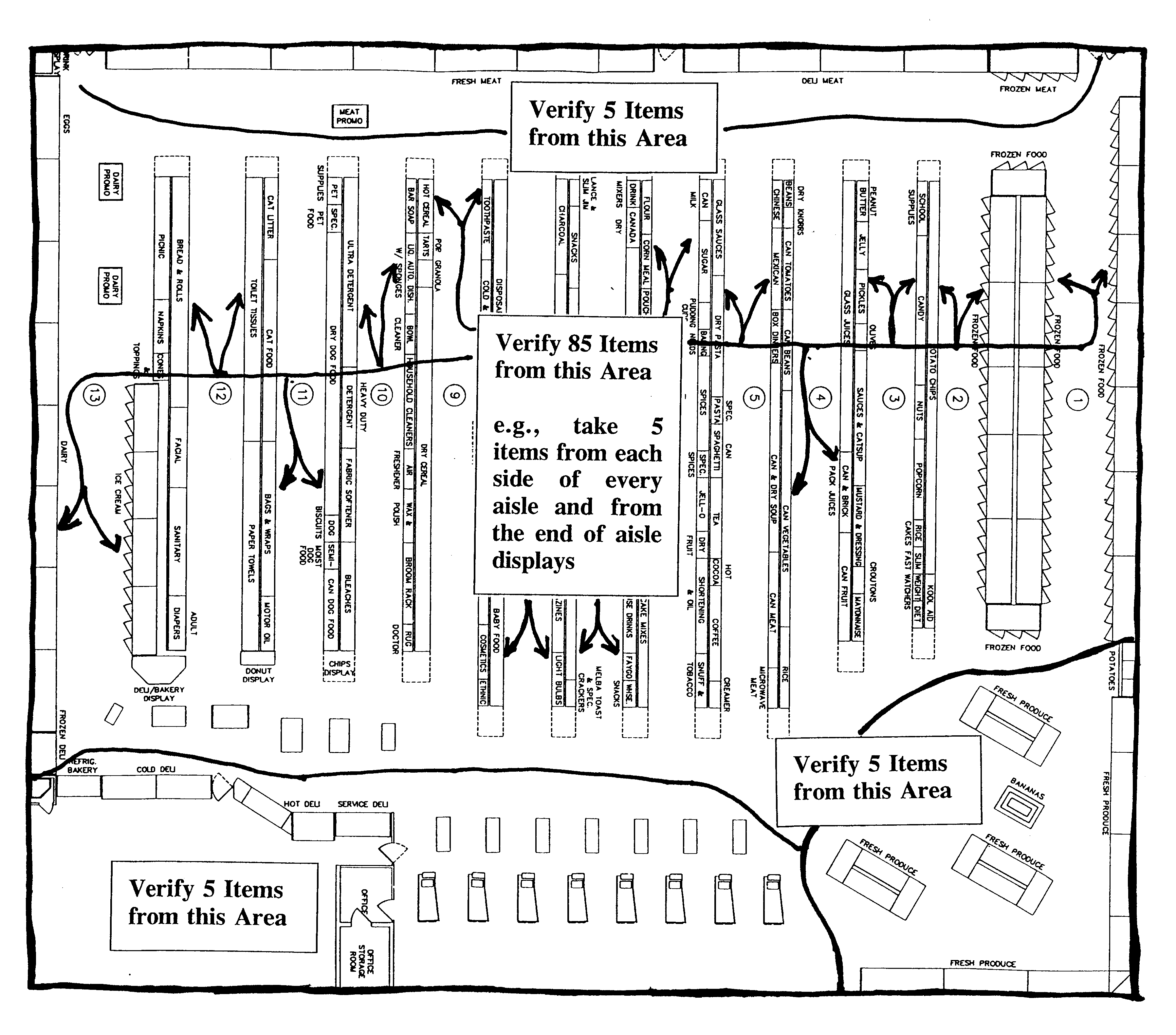
* Select 5 items from all of the shelves and displays in the produce section which are grouped as a single “area,”
* Select 85 items by choosing 5 items from either side of several of the 13 aisles (e.g., there are 26 rows of shelves from which samples may be selected. To select 85 items, select 5 items from 17 of the 26 rows of shelves).
* Select 5 items from the counters along the back of the store, and
* Select 5 items from the deli-bakery and the cash register areas which are grouped as a single “area.”

1. Figures 2 and 3 illustrate how the randomized sampling procedures may be used in any store. The examples are based on a 100‑item sample for stores that have a total of 30 “areas” to sample. The procedure allows the flexibility needed to adjust the sample to fit the store layout. To simplify the selection process, the stand-alone displays may be grouped together as an “area” to be sampled.

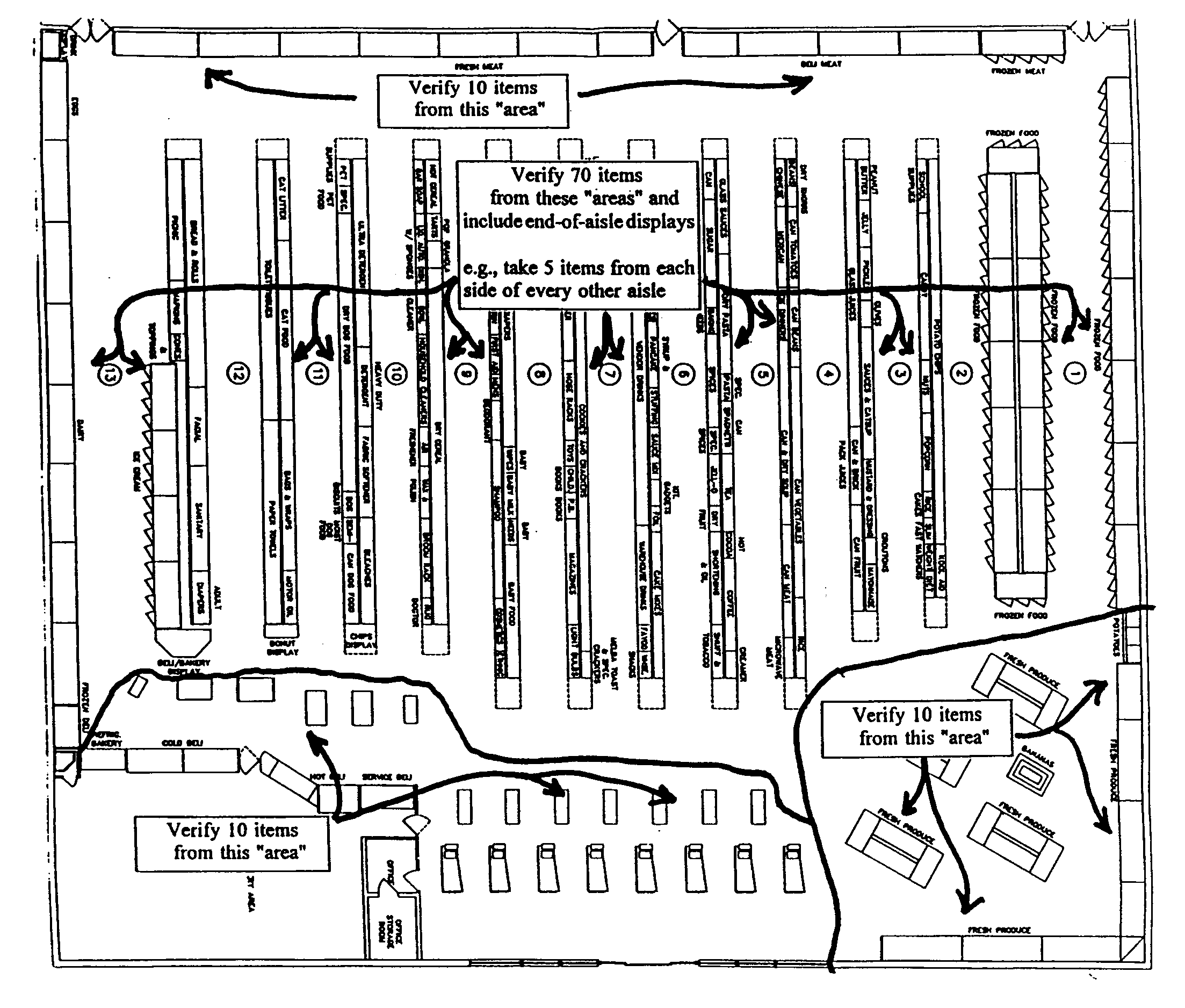
The following breakdown of “areas” is illustrated in Figure 2; the same approach is used in Figure 3. Figure 4 illustrates an example of sampling 100 items by selecting 20 items from 5 different areas in a department store.

|  |  |
| --- | --- |
| 1 - | All shelves and displays in the produce section are grouped as a single “area.” |
| 28 - | The 13 aisles (26 rows of shelves), the counters along the back of the store, and the cash register areas are counted as “areas.” |
| 1 - | The “end-of-aisle” displays at the front and back of the store are grouped as a single “area.” |
| 30 - | Total “areas” |

1. To select samples from the entire store, divide 100 by 30 to calculate how many “samples” to take from each “area.” In this example, 100 ÷ 30 = 3.3 items per area. Rounding down to 3 items, take a total of 90 samples from the different “areas,” then select an additional one (1) item from each of 10 “areas” to obtain a sample of 100 items.
2. If you round up to 4 items per area, you take a total of 120 samples, or
3. You may select 10 items from 10 “areas.”



**Figure 1. Illustration of the Randomized Sampling Procedure**

****

**Figure 2. Illustration of the Randomized Sampling Procedure**

1. Start in any “area” in the store at any shelf, rack, or display (top, bottom, front, back; anywhere on a circular rack or display). Begin with the first, second, or third item and count either 5, 10, or 15 items along the shelf (varying the number of items counted depending on how many items are available on the shelf) or along the aisle. Select the 5th, 10th, or 15th item as appropriate (See Figures 5, 6, and 7). Only select one item from each brand or product (if they are the same price) from a display that has two or more items of the same product size and price displayed side by side. You can change the number of items you count off as often as necessary during the inspection.
2. Either verify the price with a hand-held scanning device or take the item (along with the other items you select) to the check-out location to verify the price, keeping count of the items using a hand counter or tally sheet. If the price of an item is incorrect, record the item’s name, description, and price along with other information (e.g., whether the product is on sale, aisle location so you can easily find the items again to verify the error, etc.).
3. From the first item sampled, move down (or up) one shelf to the item most directly below (or above) and count 5, 10, or 15 items in the same direction and sample the 5th, 10th, or 15th items, as appropriate. After the number of items to be verified in each “area” have been selected, go to the next “area” and start on the next shelf (either down or up) from where the previous sample was selected, count 5, 10, or 15 items and select the appropriate item using the count system until the required number of samples is selected. If you have sampled an item on the bottom (or top) shelf and have more items to test in the “area,” simply go up (or down) one shelf. This will create a “zigzag” trail up and down the display.

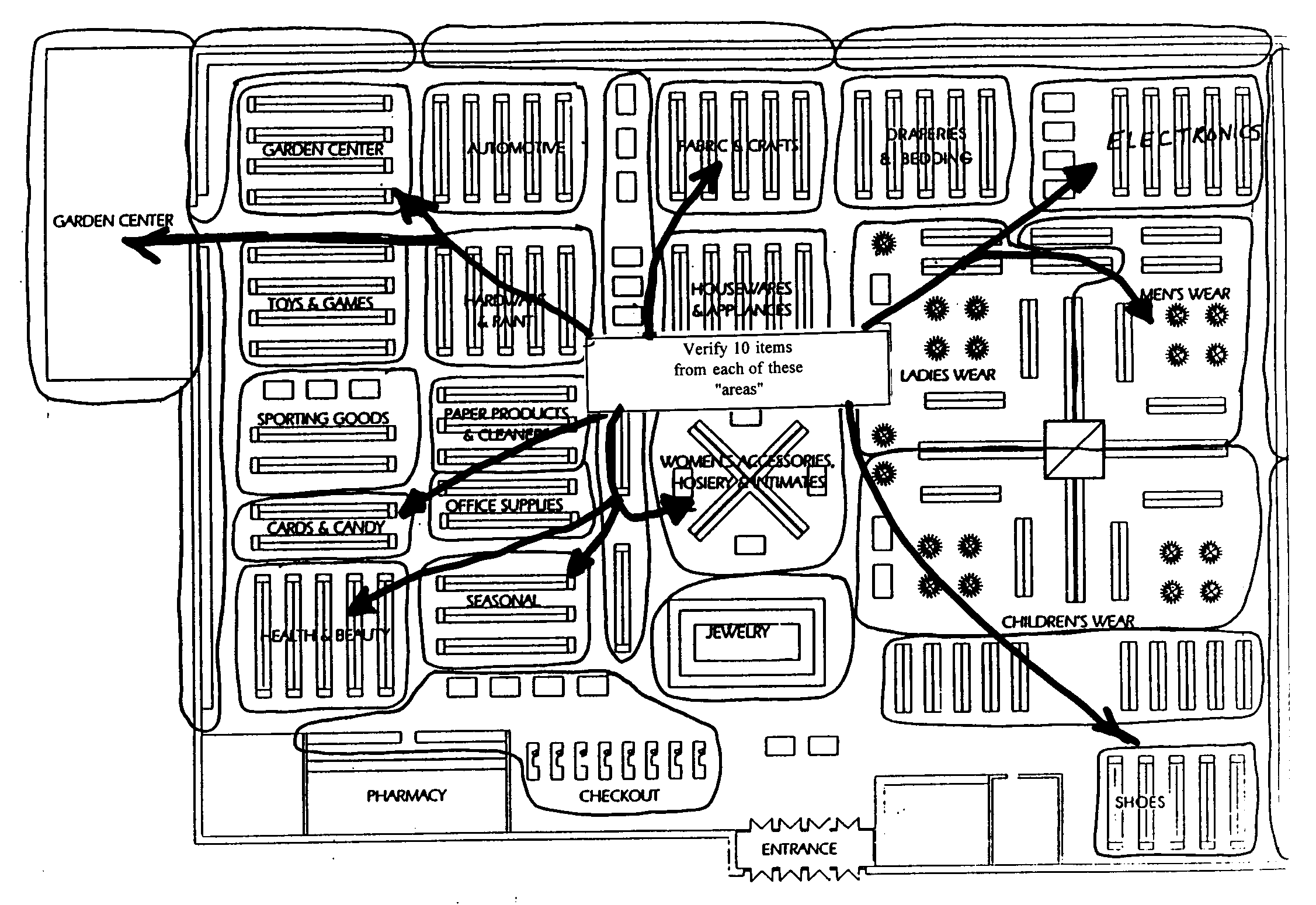
***NOTE:*** *Randomness can be increased by starting on different shelves or at the midpoint or rear of an aisle during an inspection, or by starting at different locations in a store on subsequent inspections. Always start at a different location on subsequent inspections of a store. To maintain “randomness,” do not search for obvious pricing errors. If you see pricing errors, have them corrected. The sample should not include more than one of the same item from the same display. If an item is out of stock, select the next item*.

1. This procedure is repeated for all “areas” until you complete the sample. (See following Notes)

***NOTE 1:*** *Include at least 5 to 10 Price Look Up (PLU) and store-coded items in the samples. In food stores, these items do not usually have to be removed from the produce, bulk foods section, or deli display for use in this procedure. You can use a hand-held scanner or record the identity and item price designated at the product sales display of the items from the different department (produce, bakery, deli), if available, for price comparison through either the PLU programmed in the department’s scale or at the point-of-sale system. Have the PLU entered in the scale (See Note 2) or point-of-sale system (or have “store-coded” items scanned) and record the price, comparing it with the displayed sale price. Record any errors (See Note 3). When checking “store-coded” items from the meat or other departments, remember a “UPC symbol” on a random weight label is read by a scanner to obtain the total price and identity. The price is not stored in the point-of-sale database, but in the memory of the prepackaging scale.*

***NOTE 2****: Some scales or point-of-sale systems do not display or record the unit price associated with the PLU unless a weight is on the scale. For this type of device, a one pound standard (or 1 kg) is placed on the scale load-receiving element. Some systems automatically deduct tare, so check to make sure that this does not affect the price indication.*

***NOTE 3:*** *When you manually enter PLU codes and find errors, reenter the PLU number to ensure that the error was not caused by a keying mistake and that the item was identified accurately.*



**Figure 3. Illustration of the Randomized Sampling Procedure**

**7.3.2. Stratified Sample Collection.** – Stratified sample collection (i.e., selecting samples from specific merchandise groups) of items on sale, specials, seasonal items, or items on end-of-aisle displays) is typically used (e.g., if a store has failed an inspection based on the randomized sample collection procedures) to focus on specific merchandise groups that appear to have more errors than others (e.g., you find that many of the errors found in the randomized sample were in “advertised specials” or with “discontinued items”). You can also combine sample collection procedures by using a “randomized/stratified” approach. The “stratified” approach may be used the first time you inspect a store, in stores that have just implemented scanning, in stores that have high error rates on particular groups of items in past inspections, or in responding to consumer complaints involving a particular group of items.

For stratified sample collection, items are randomly selected from different “merchandise groups” in a store. They are tested in the first stage of the two-stage manual sampling plan to determine if (1) any group has more errors than any other and (2) the sample taken in the first stage meets accuracy requirements. This method should be modified depending on the marketing practices of the store in which it is used (e.g., if you are in a department store, there may be fewer groups to sample from, or the list provided below may not include the types of groups typically encountered in a hardware superstore). The next example shows how to conduct a stratified sample and how it is used, but it should not be the sole basis for sample collection because a specific list of items does not look at the store as a whole. Focusing on specific merchandise groups takes time, but this may be necessary when investigating a complaint or following up on a prior noncompliance. Select only one item from each brand or product from a display that has two or more items of the same product, size, and price displayed side by side if they are the same price.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Figure 4. Stratified Sample Collection** |  | **Figure 5. Randomized Sample Collection** |

**Sample Size.** – In this example, a large food store is inspected using a two-stage sampling plan (50 items/100 total items). The inspection begins with an initial sample of 50 items (see Column 1. Type of Store for All Other Retail Stores and Column 2. Sample Sizes in Table 1).

**Stratified Sample Collection.** – Select 50 items from the merchandise groups listed below (provided as examples only; stores may have other groups that should be included). This procedure allows you to focus on specific merchandise groups to determine if errors are indeed occurring in groups where they are thought to occur most frequently (e.g., sale and direct delivery items).

7.3.2.1. Example 2. Two-Stage Manual Inspection using the Stratified Sampling Procedure.

If there is an insufficient number of items in any merchandise group, or if the group of items is not available, increase the number of “randomized” items selected from the overall inspection lot to obtain a total of 50 items. As marketing practices evolve, these groups may change as well. You may substitute “other” or new merchandise groups for any of those listed below (e.g., you may have identified errors in the “health and beauty aids” section or on “manager specials” during a previous inspection, so samples from these groups may be substituted for any of the groups listed below). Model “Price Verification Tally Sheets” in Section 14. Model Forms for Price Verification Inspections are provided for your use with the test procedures to keep track of the number of items selected.

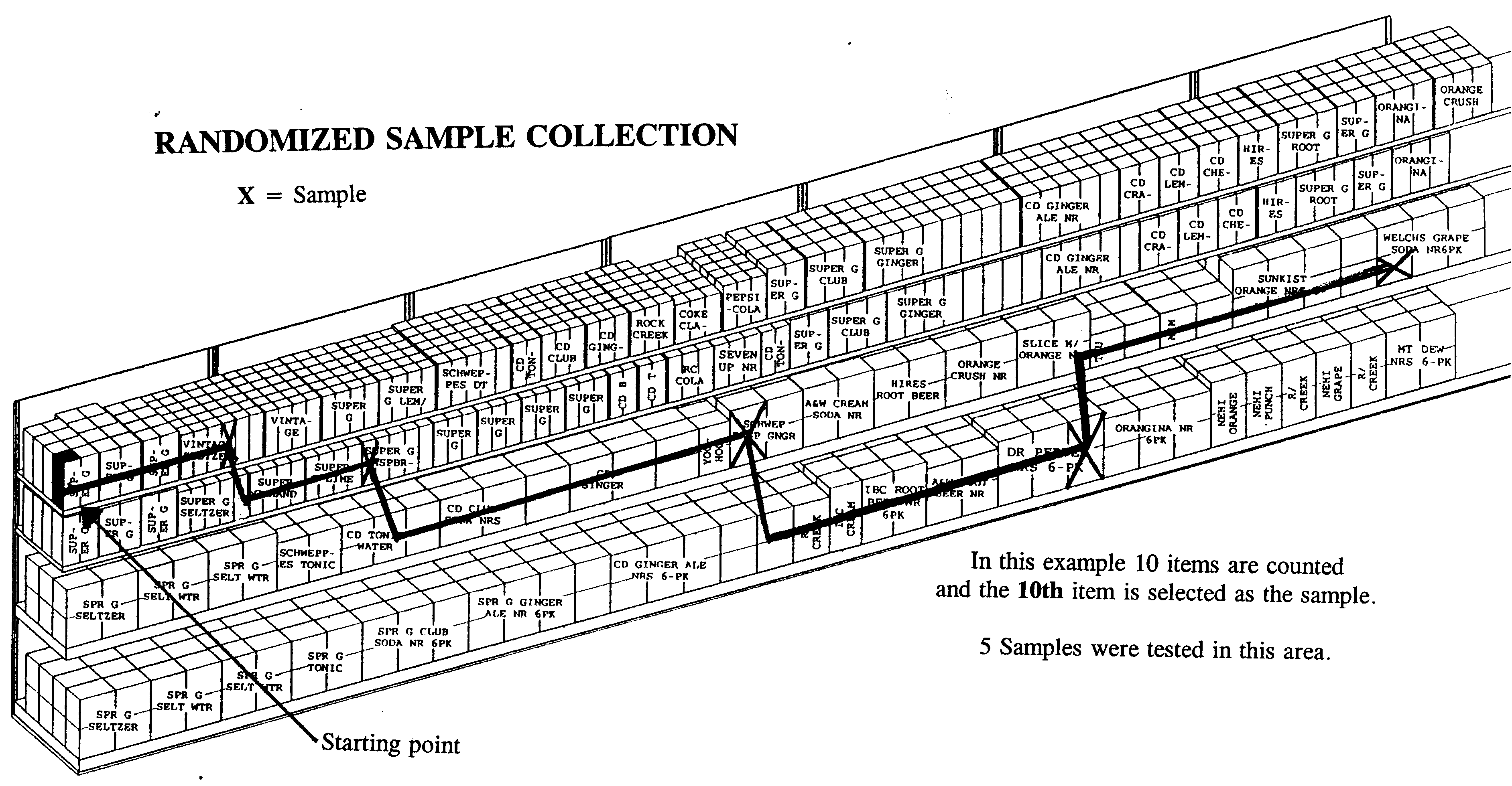
**First-Stage:  50 items.** – Use the “randomized” sample collection procedures described in 7.3.1. Randomized Sample Collection to select the following items. These sample collection procedures simplify the inspection process and ensure that samples are collected as randomly as possible.

**Examples:**

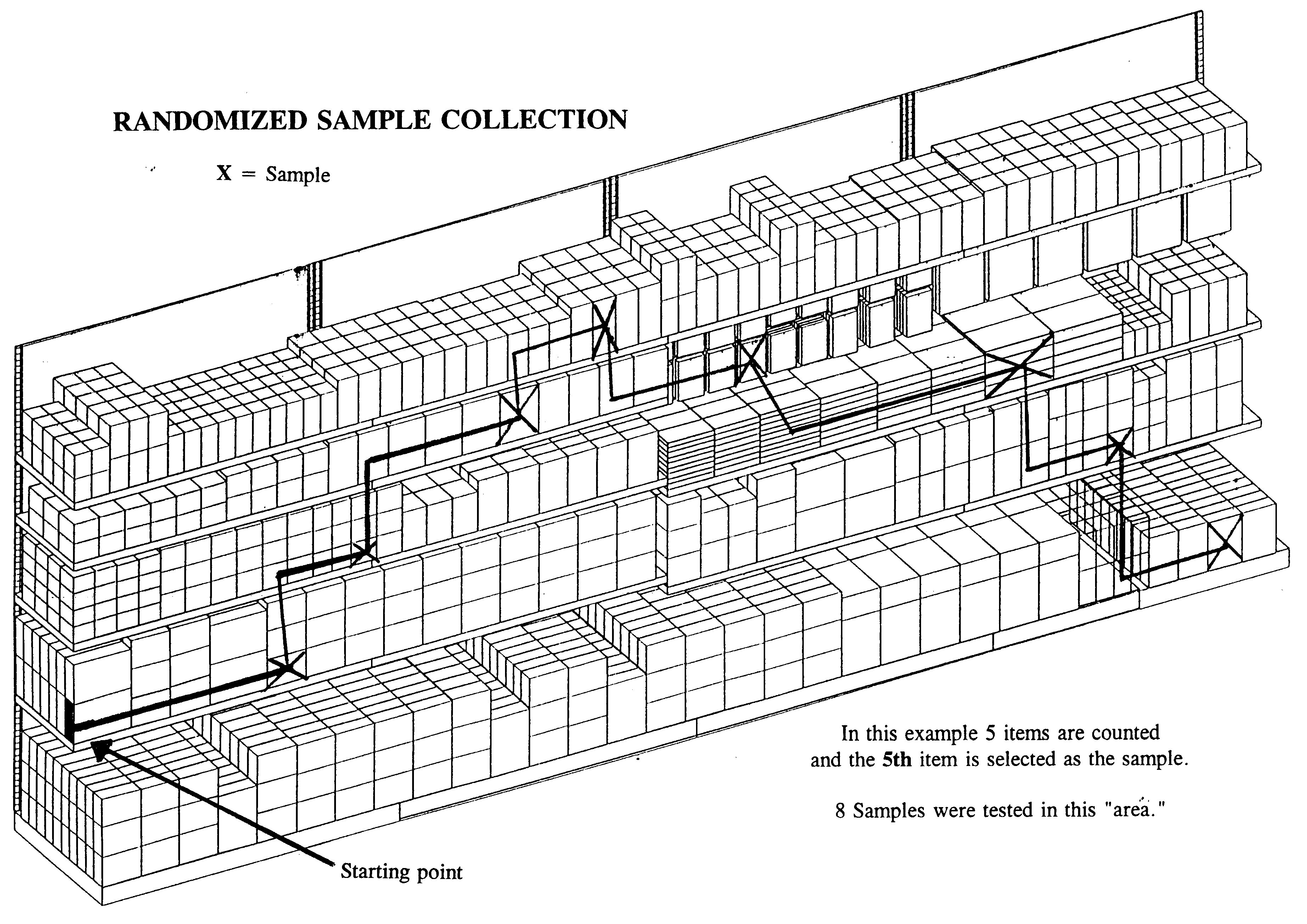
* Twenty-five “Regular Priced” items. Select one or two items at random from different shelves in each “area” or limit your sampling to shelves in one-half the “areas” in the store, and
* Twenty-five Items. Select a total of 25 items. Include several items from any of the following merchandise groups:
* “Direct-Store-Delivery (DSD)” items. If the store allows vendors to price DSD items, include those items in the sample.
* “End-of-Aisle” or “Tie-In-Display” items. This group can include both regular and sale-priced items.
* “Advertised Sale” items. Use the store’s sales brochure or newspaper advertisements to identify sale items.
* “Special” items. This includes any item with a reduced price (e.g., items on “special” including “cents-off” or “percentage-off” items, 2‑for‑the‑price‑of‑1 specials, manager and in-store specials, or discontinued items). Items typically discounted on a percentage basis include a manufacturer’s product line, greeting cards, magazines, or books.
* “PLU” items. This includes both regular and sale priced items offered in the produce, bakery, or bulk food departments and over scales at the direct sale counters. For direct service departments (e.g., produce, deli, specialty meats, etc.), select products at random (include some sale or special prices) and enter the code in the scale [***NOTE 1****, page* 214] to verify that the coded price matches the advertised price [***NOTE 2****, page* 214].
* “Store-coded” items. This includes items offered in the produce, bakery, or meat departments that have labels with the UPC symbol generated by scales and printers in the store. For store-coded items, scan the item and determine if the total price and identity on the label are accurately read by the point-of-sale system. When checking “store-coded” items from the meat or other departments, remember that a “UPC symbol” on a random weight label is read by a scanner to obtain the total price and identity. The price is not stored in the point-of-sale database.
* “Other” items. This category is included to provide flexibility in selecting a sample so that “seasonal” items, or products unique to the store or local market, can be included. Both regular and sale-priced items can be included in this category.

***NOTE 1:***  *Some scales or point-of-sale systems do not display or record the unit price associated with the PLU unless weight is on the scale. For these devices, a 1 lb (or 1 kg) standard is placed on the scale load-receiving element. Some systems automatically deduct tare, so make sure this does not affect the price indication.*

***NOTE 2:*** *When a not-on-file item is found, another item is selected at random to replace it in the sample. A “not-on-file” item is not an error unless you determine (e.g., by conducting a test purchase or by asking the check-out clerk to determine the price of the item using the store’s customary procedures) that the price “charged” for the item is incorrect. If the price determined is not correct, the error is included in the total.*



**Figure 6.**



**Figure 7.**

Identify the item on an inspection report (e.g., record a brief description, item number, shelf, or advertised price and aisle location. The aisle location makes it easy to find the product if errors are found and to re-shelve the items). As items are selected, use the “Price Verification Tally Sheet,” or other means, to keep track of the number of items collected. (See Section 14. Model Forms for Price Verification Inspections. The “Model Price Verification Reports” in this proposal were developed with the assumption that it is only necessary to record information of items found with price errors, not all items verified. This reduces paperwork and saves time.) Either use a hand-held scanning device or take the items to a cash register, verify the prices by scanning the items or entering a PLU code into the register and printing a receipt. The prices “charged” at the register are then compared to the advertised price of each item. For large or perishable items, record the identity, UPC Code, location, and price and manually enter the UPC number into the register to verify the price. However, this method is subject to recording and key entry errors.

**Evaluation of Results on First-Stage.**

See Section 9. Evaluation and Inspection Results for guidance on which errors are considered violations: One error in a 50-item sample is permitted. If not more than one error is found and verified, the store passes; if 3 items are found in error in the first 50 items, the store fails and the inspection is complete.

If two errors are found, collect 50 more items using the randomized sampling procedures and verify a total of 100 items. If errors were found in any specific merchandise group (or groups) of items (e.g., direct-store-delivery items, PLU codes, or specials), the additional 50 items should include items from those merchandise groups.

**Accuracy.**

Refer to Column 4 in Table 1. Samples, Sample Collection, and Accuracy Requirements. The required accuracy is 98 % on the 100‑item sample (that is, at most two errors are permitted on a 100‑item sample). If more than two errors are found and verified, the store does not meet the accuracy requirement.

***NOTE:*** *The “randomized” and “stratified” sample collection procedures in this section are intended for use in routine inspections to determine how a store is maintaining price accuracy on all of the items it offers for sale. If you use these sampling procedures in routine inspections and uncover a significant number of errors in a particular merchandise group (e.g., a significant number of the pricing errors are found with “advertised sale item” items), a randomized sample can be collected entirely within this specific merchandise group. For example, if the error rate for “advertised specials” is higher than the rate for regular priced items, a more focused inquiry to determine if there is a significant error rate in this merchandise group may be justified. If several “advertised specials” have been the subject of consumer complaints, or if they are repeatedly found to be in error during routine inspections, then a randomized sample can be limited to the “advertised specials” merchandise group. In this case, a randomized sample (e.g., a 50/100 item two-stage approach) is taken from all of the “advertised sale items” offered for sale in the store or in a specific “area.” The results of this sample are applicable only to the “advertised specials” group and not to all items in the store.*

7.4.  Procedures for Test Purchases, Investigation of Consumer Complaints, and for Verification of Manually Entered Prices.

**7.4.1. Procedure.** –This procedure may be used to (1) investigate consumer complaints, (2) determine if a store has corrected a pricing error after being notified that an error occurred, or (3) determine if manually keyed-in prices or PLU codes are accurate.

***NOTE:*** *When verifying manual price entries, store management is typically not notified of the test until the items have been totaled and the transaction completed.*

1. Do not alert the clerk to the fact that the test purchase procedure is being conducted. Do not ask questions concerning any errors that you observe or offer any information if asked the price of an item, in cases where the item price is illegible, or where the item is not on file.
2. Use the “randomized” sampling procedures to select a sample of 10 to 50 items that includes regular and sale priced items, PLU items, and advertised specials from various “areas.” It is acceptable to purchase only one or just a few items if you are investigating a complaint on a specific item. Record the name and identity of the product, as well as the labeled or advertised price, for each item.
3. Proceed through a check-out as if you were a customer and pay for the purchase. Obtain the original sales receipt, and compare the price charged with the labeled or advertised price for each item. Record the time of day, lane number, and the identity of the checker. Before leaving the store, determine if any errors have occurred. Identify yourself and inform the store management that a test purchase was conducted and report the results. (In many instances, the store will credit back all of the items and refund the test purchase money.) Record the information on the test report form and determine the cause of the error (e.g., operator error, mislabeling, or incorrect price sign).

**7.4.2. Alternative Procedure - Consumer Complaints.** – Complaints can be investigated by using any of the test procedures described above or by verifying only the price of the item or items subject to the complaint. If the complaint is valid, you can limit your inspection to the items described in the complaint or you may conduct a complete inspection.

**7.4.3.  Evaluation of Results.** – The errors for items verified using these procedures should be evaluated according to Sections 9. Evaluation of Inspection Results and 10. Accuracy Requirements.

Section 8. Documentation of Findings

Several examples of Model Price Verification Reports are contained in pages 219 to 224. These forms were developed so that you only have to record the items found with price errors.

1. Record errors and provide information on the cause, if determined. Indicate if the errors are considered to be violations, if stop-sale orders were issued, or if the violation was corrected.
2. Notices of violations or other significant comments (e.g., warnings or violations ordered corrected) should always be included on the test form.
3. Cash register receipts on verified items should be retained and attached to the inspection report as evidence.
4. Printed advertisements and sales flyers should be retained and attached to the inspection report when errors are found in these categories.

Section 9. Evaluation of Inspection Results

9.1. Definition of Errors. – An error found to result from any of the following causes should not be considered a violation for enforcement purposes:

1. An intentional undercharge if documentation or confirmation of the date and time of the price change is provided at the time of the inspection.
2. An error caused by a mistake made in any kind of advertisement (e.g., newspaper, printed brochure, or radio or television advertisement) if the store has placed a notice adjacent to the item indicating that a mistake occurred in the advertisement.
3. An error obviously caused by a price label that is missing or that has fallen off the shelf, or the item or the price label or sign has obviously been relocated by an unauthorized person.
4. A “not-on-file” item is not an error unless you determine that the price “charged” for the item is incorrect (e.g., by conducting a test purchase or by asking the check-out clerk to determine the price of the item using the store’s documented or customary procedures. If the price determined is incorrect, it is considered an error.)

***NOTE****: It is recommended that you work with the store representative to identify the cause of any error and note the problem/cause on the report. This may not change your findings, but will help to identify problems related to staff errors, failure to follow through on established store pricing procedures, data entry errors, or failure of management to provide correct written data, etc. The supporting information will help with enforcement decisions as well as in-house monitoring of product pricing.*

9.2. Computing Sample Errors. – The following formulas are used to determine sample error and the overcharge to undercharge ratio:

1. Adjust the total sample by subtracting any items or errors specified in 9.1. Definition of Errors.
2. To compute the sample error, divide the number of errors by the total sample size to obtain the error in percent.

For example: a sample of 100 items is verified; 3 overcharges and 1 undercharge are found for a total of 4 errors:

4 ÷ 100 = 4 % sample error.

1. To compute the ratio of overcharges to undercharges (used on large samples and in follow-up activities), total the overcharges/undercharges and compare the numbers:

3 overcharges/1 undercharge = a 3 to 1 ratio.

Section 10. Accuracy Requirements

10.1. Accuracy Requirements. – Accuracy information, based on a percentage of errors found in a sample and the ratio of overcharges to undercharges, constitutes useful criteria for evaluating the “pricing integrity” of the store. Both overcharges and undercharges should be considered as errors in taking lower level enforcement actions since (1) either type of error misrepresents the price of the item; and (2) the occurrence of any error in a randomized sample may indicate poor pricing practices that would result in errors where additional items were sampled. For higher levels of enforcement only overcharges are considered.

10.2. Accuracy. – The accuracy requirement for a sample must be 98 % or higher to “pass” a single inspection. See Column 4, Accuracy Requirements, in Table 1. Samples, Sample Collection, and Accuracy Requirements.

10.3. Ratio of Overcharges to Undercharges. – With large sample sizes, overcharges should not exceed the undercharges. A high rate of overcharges to undercharges (2 to 1, or 3 to 1) may indicate systematic problems with a store’s pricing practices.

***NOTE****: As the history of store compliance develops, the number of overcharges and undercharges may be evaluated to determine if systematic errors or other problems exist. This ratio should be maintained when at least 10 errors are found over several inspections, or in a single large sample size (e.g., the results of several 100‑item inspections collected over a period of time or if 1000 items are sampled in one inspection.)*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Table 2. Price Errors**  (This table shows the percentage of errors in different sample sizes) | | | | | | |
| **Percentage of Errors**  **Sample Size** | | | | | | |
| **No. of**  **Errors** | **25** | **50** | **100** | **150** | **200** | **300** |
| 1 | 4 % | 2 % | 1 % | 0.67 % | 0.50 % | 0.33 % |
| 2 | 8 % | 4 % | 2 % | 1.33 % | 1.00 % | 0.67 % |
| 3 | 12 % | 6 % | 3 % | 2.00 % | 1.50 % | 1.00 % |
| 4 | 16 % | 8 % | 4 % | 2.67 % | 2.00 % | 1.33 % |
| 5 | 20 % | 10 % | 5 % | 3.33 % | 2.50 % | 1.67 % |
| 6 | 24 % | 12 % | 6 % | 4.00 % | 3.00 % | 2.00 % |
| 7 | 28 % | 14 % | 7 % | 4.67 % | 3.50 % | 2.33 % |
| 8 | 32 % | 16 % | 8 % | 5.33 % | 4.00 % | 2.67 % |
| 9 | 36 % | 18 % | 9 % | 6.00 % | 4.50 % | 3.00 % |
| 10 | 40 % | 20 % | 10 % | 6.67 % | 5.00 % | 3.33 % |

***NOTE:*** *Random pricing errors are to be expected, but the ratio of overcharges to undercharges will rarely be exactly 1 to 1 (e.g., of 10 errors, 5 overcharges and 5 undercharges); the ratio will likely vary both ways over several inspections. If a store has more overcharges than undercharges (e.g., 2 to 1, or 3 to 1), it may indicate that the store is not following good pricing practices, but enough errors must be present in order to make this determination. (Consider the example of 12 pricing errors consisting of 8 overcharges and 4 undercharges: the ratio of overcharges to undercharges is 2 to 1. Similarly, 10 pricing errors consisting of 6 overcharges and 4 undercharges correspond to a ratio of 1.5 to 1; since all decimal values are truncated to whole numbers, 1.5 is truncated to 1, and the ratio becomes 1 to 1.)*

The one-to-one ratio should be applied to any sample size if at least 10 errors are present. For example, if 1000 items are verified and 10 items are found in error, the sample has an accuracy of 99 %. However, if 9 of the 10 errors are overcharges (i.e., a ratio of 9 overcharges to 1 undercharge), the store should be considered to have poor pricing practices or other problems; if 100 items are verified and a 90 % accuracy is found, 10 items in error not meeting the overcharge to undercharge ratio can be used in enforcement action as evidence of poor pricing practices.

Section 11. Enforcement Procedures

11.1. Enforcement Steps.

1. Compliance is based on the accuracy found on a sample collected according to this procedure.
2. Errors should be corrected immediately, or if the correction cannot be made immediately, a stop-sale order shall be issued before you leave the business. If the errors are not corrected in your presence, a follow-up inspection may be made later in the day or the following day to ensure the store has corrected the error. If a store fails to correct the error by that time, higher level enforcement action should be taken.
3. Enforcement action for large monetary errors on individual items, confirmed overcharges on items verified in response to complaints, or errors found on follow-up inspection of items ordered corrected, should be taken independently from any sample, giving consideration to the magnitude of the violation, corrective action by the establishment, and any other relevant information. Action may be initiated at any time in the inspection process based on the facts of the individual case.
4. Overcharges and undercharges are used to determine lower levels of enforcement actions, but higher levels of enforcement action (e.g., fines or penalties) are taken only on the overcharges found in the sample.

(Amended 2001)

***NOTE:*** *Many computer systems do not allow for the immediate correction of errors in the database. Downloading information throughout the day may not be possible. Therefore, for the purposes of this section, “immediate” correction of errors may entail the removal or correction of problem signs, manually changing marked prices, or communicating notice of the corrected price to all applicable stores through facsimile, e-mail, or any other appropriate medium to ensure that consumers are charged the correct price.*

11.2. Model Enforcement Levels.

*These recommendations do not modify the enforcement policy of any jurisdiction unless adopted by that jurisdiction.*

1. **Ninety-Eight Percent or Higher.** – If price accuracy is 98 % or higher on a sample of 50 or more items, and if overcharges do not exceed undercharges on sample sizes of 100 or more items, and the store is on a normal inspection frequency:
   1. a notice of noncompliance is issued on violations, and the store is maintained on a normal inspection frequency; or
   2. if the store is on increased inspection frequency, it remains on this frequency until inspection results conform to Terms of Increased Inspection Frequency.
2. **Less Than Ninety-Eight Percent.** – If price accuracy is less than 98 % on a sample of 50 or more items and if overcharges do not exceed undercharges on large sample sizes, and the store is on normal inspection frequency:
   1. A notice of noncompliance is issued and the store is placed on an increased inspection frequency.
   2. A second inspection should be conducted within 30 business days. If the price accuracy then is not 98 % or higher, a warning is issued.
   3. A third inspection should be made within 60 business days. If the price accuracy is again less than 98 %, higher level enforcement action should be taken.

(Amended 2001)

If the store is on increased inspection frequency, a warning should be issued and the store re-inspected within 30 business days. If price accuracy is less than 98 %, higher levels of enforcement action should be taken.

(Amended 2001)

**Examples:**

For the 100‑item sample size:

* If 100 items are verified and three overcharges are found in the sample, the error rate is 3 %. In this example, higher levels of enforcement action should be taken.
* If 100 items are verified and three overcharges and two undercharges are found, the error rate on the sample is 5 %, but overcharges are 3 %. In this example, higher levels of enforcement action should be taken.
* If 100 items are verified and two overcharges and three undercharges are found, the error rate is still 5 %, but overcharges are only 2 % of the sample. In this example, a lower level enforcement action would be taken.

1. **Terms of Increased Inspection Frequency.** – When a store is on increased inspection frequency, it shall remain at that frequency until two consecutive inspections reveal an accuracy of 98 % or higher.
2. **Higher Levels of Enforcement Action.** – Overcharges and undercharges are used to determine lower levels of enforcement actions, but higher levels of enforcement action (e.g., fines or penalties) are taken only on overcharges. A store’s history of error rates, the time it takes a store to correct the errors, the difference in inaccuracy rates found between “regular” and “sale” priced items, the ratio of overcharges to undercharges, a record of valid consumer complaints, and the magnitude of the error(s) may be used to support enforcement action.

Section 12. Post-Inspection Tasks

1. You should meet with the store representative to review your findings. Have the inspection report completed prior to the meeting and be prepared to briefly summarize your findings and recommended actions, and provide a copy to the store representative.
2. Return borrowed safety, sanitation, and/or test equipment.
3. If you removed items from display, ensure that the items are returned to their proper location on the store shelves unless the representative requests to have the items returned by a store employee, which is permitted.
4. Advise the representative of your findings. Explain any violations and errors. Explain any orders issued and be sure the individual acknowledges understanding of what corrective action is expected, if any.
5. If necessary, describe the implications of the inspection results and advise the store of the action that you intend to take. If an increased inspection frequency is called for due to the accuracy level found during the inspection, advise the firm that re-inspections will be made, but do not indicate when they may occur.

Section 13. Supervisory Activities

13.1. Baseline Surveys. – Price verification programs require management support so that the program’s objectives and desired benefits can be incorporated into the enforcement agency’s work plans and budget. Surveys to measure pre- and post-implementation accuracy should be used to establish a base from which to measure whether a cost/benefit has been obtained.

13.2. Follow-up Inspections.– Inspections that reveal errors exceeding the accuracy requirements recommended above must include follow-up action to ensure that the store fulfills its obligations regarding accurate prices.

13.3. Management Information Systems.– To ensure adequate control and follow-up, a database should be established in each jurisdiction to provide information on every store, including:

|  |  |
| --- | --- |
| **For stores:**   * store name * address * telephone * type of store * frequency of inspection * sample size * accuracy * number of overcharges * dollar value of overcharges * number of undercharges * dollar value of undercharges * average money value of undercharges * ratio of overcharges to undercharges | **For program review:**   * total number of undercharges * total dollar value of undercharges * average dollar value of undercharges * percent undercharges of total * ratio of overcharges to undercharges * total error in percent * accuracy levels of stores * store type * total stores tested * total stores tested (each type) * total items tested * total number of overcharges * total dollar value of overcharges * average dollar value of overcharges * percent of overcharges of total |

Section 14. Model Forms for Price Verification Inspections

These models can be used to develop formal report forms, or they can be copied and used as worksheets for conducting inspections:

1. **Sample Tally Sheets:** These forms can help you keep track of the number of items verified. They provide spaces to record the item’s display location (e.g., aisle or department), a description of the item, and the shelf or advertised price. The worksheets are set up for the stratified sample collection described above to help identify the types of products to select.
   * 1. Price Verification Tally Sheet – Food Stores. (See page 223.)
     2. Price Verification Tally Sheet – Department Stores. (See page 224.)
2. **Model Inspection Form I:** This can be used to document violations and record findings. A completed sample is provided.
   * 1. Price Verification Report I – sample blank form. (See page 225.)
     2. Price Verification Report I – completed sample form. (See page 226.)
3. **Model Inspection Form II:** This can be used in stores where a hand-held scanning device is not available, or when it is inconvenient to take items (e.g., a large ladder in a hardware store) to a check-out register to verify the price. You can record an identity, the UPC or PLU code, and advertised price so that you can manually enter the codes to verify the price. The form can also be used to record findings. A completed sample is provided.
   * 1. Price Verification Report II – sample blank form. (See page 227.)

* + 1. Price Verification Report II – completed sample form. (See page 228.)

**Price Verification Tally Sheet - Food Stores**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| “End of Aisle” or  “Tie-In Display” | **Item** | **Location** | **UPC/Identity** | **Shelf Price** |
| 1. \_\_\_\_\_\_\_\_\_\_\_ | 1. \_\_\_\_\_\_\_\_\_\_\_ | 1. \_\_\_\_\_\_\_\_\_\_\_ | 1. \_\_\_\_\_\_\_\_\_\_\_ |
| 2. \_\_\_\_\_\_\_\_\_\_\_ | 2. \_\_\_\_\_\_\_\_\_\_\_ | 2. \_\_\_\_\_\_\_\_\_\_\_ | 2. \_\_\_\_\_\_\_\_\_\_\_ |
| 3. \_\_\_\_\_\_\_\_\_\_\_ | 3. \_\_\_\_\_\_\_\_\_\_\_ | 3. \_\_\_\_\_\_\_\_\_\_\_ | 3. \_\_\_\_\_\_\_\_\_\_\_ |
| 4. \_\_\_\_\_\_\_\_\_\_\_ | 4. \_\_\_\_\_\_\_\_\_\_\_ | 4. \_\_\_\_\_\_\_\_\_\_\_ | 4. \_\_\_\_\_\_\_\_\_\_\_ |
|  |  |  |  |
| “PLU or  Coded” Items | 6. \_\_\_\_\_\_\_\_\_\_\_ | 6. \_\_\_\_\_\_\_\_\_\_\_ | 6. \_\_\_\_\_\_\_\_\_\_\_ | 6. \_\_\_\_\_\_\_\_\_\_\_ |
| 7. \_\_\_\_\_\_\_\_\_\_\_ | 7. \_\_\_\_\_\_\_\_\_\_\_ | 7. \_\_\_\_\_\_\_\_\_\_\_ | 7. \_\_\_\_\_\_\_\_\_\_\_ |
| 8. \_\_\_\_\_\_\_\_\_\_\_ | 8. \_\_\_\_\_\_\_\_\_\_\_ | 8. \_\_\_\_\_\_\_\_\_\_\_ | 8. \_\_\_\_\_\_\_\_\_\_\_ |
| 9. \_\_\_\_\_\_\_\_\_\_\_ | 9. \_\_\_\_\_\_\_\_\_\_\_ | 9. \_\_\_\_\_\_\_\_\_\_\_ | 9. \_\_\_\_\_\_\_\_\_\_\_ |
| 10. \_\_\_\_\_\_\_\_\_\_ | 10. \_\_\_\_\_\_\_\_\_\_ | 10. \_\_\_\_\_\_\_\_\_\_ | 10. \_\_\_\_\_\_\_\_\_\_ |
| “Advertised Sale” Items | 11. \_\_\_\_\_\_\_\_\_\_ | 11. \_\_\_\_\_\_\_\_\_\_ | 11. \_\_\_\_\_\_\_\_\_\_ | 11. \_\_\_\_\_\_\_\_\_\_ |
| 12. \_\_\_\_\_\_\_\_\_\_ | 12. \_\_\_\_\_\_\_\_\_\_ | 12. \_\_\_\_\_\_\_\_\_\_ | 12. \_\_\_\_\_\_\_\_\_\_ |
| 13. \_\_\_\_\_\_\_\_\_\_ | 13. \_\_\_\_\_\_\_\_\_\_ | 13. \_\_\_\_\_\_\_\_\_\_ | 13. \_\_\_\_\_\_\_\_\_\_ |
| 14. \_\_\_\_\_\_\_\_\_\_ | 14. \_\_\_\_\_\_\_\_\_\_ | 14. \_\_\_\_\_\_\_\_\_\_ | 14. \_\_\_\_\_\_\_\_\_\_ |
| 15. \_\_\_\_\_\_\_\_\_\_ | 15. \_\_\_\_\_\_\_\_\_\_ | 15. \_\_\_\_\_\_\_\_\_\_ | 15. \_\_\_\_\_\_\_\_\_\_ |
| 16. \_\_\_\_\_\_\_\_\_\_ | 16. \_\_\_\_\_\_\_\_\_\_ | 16. \_\_\_\_\_\_\_\_\_\_ | 16. \_\_\_\_\_\_\_\_\_\_ |
| 17. \_\_\_\_\_\_\_\_\_\_ | 17. \_\_\_\_\_\_\_\_\_\_ | 17. \_\_\_\_\_\_\_\_\_\_ | 17. \_\_\_\_\_\_\_\_\_\_ |
| 18. \_\_\_\_\_\_\_\_\_\_ | 18. \_\_\_\_\_\_\_\_\_\_ | 18. \_\_\_\_\_\_\_\_\_\_ | 18. \_\_\_\_\_\_\_\_\_\_ |
| 19. \_\_\_\_\_\_\_\_\_\_ | 19. \_\_\_\_\_\_\_\_\_\_ | 19. \_\_\_\_\_\_\_\_\_\_ | 19. \_\_\_\_\_\_\_\_\_\_ |
| 20. \_\_\_\_\_\_\_\_\_\_ | 20. \_\_\_\_\_\_\_\_\_\_ | 20. \_\_\_\_\_\_\_\_\_\_ | 20. \_\_\_\_\_\_\_\_\_\_ |
| Items on “Special” | 21. \_\_\_\_\_\_\_\_\_\_ | 21. \_\_\_\_\_\_\_\_\_\_ | 21. \_\_\_\_\_\_\_\_\_\_ | 21. \_\_\_\_\_\_\_\_\_\_ |
| 22. \_\_\_\_\_\_\_\_\_\_ | 22. \_\_\_\_\_\_\_\_\_\_ | 22. \_\_\_\_\_\_\_\_\_\_ | 22. \_\_\_\_\_\_\_\_\_\_ |
| 23. \_\_\_\_\_\_\_\_\_\_ | 23. \_\_\_\_\_\_\_\_\_\_ | 23. \_\_\_\_\_\_\_\_\_\_ | 23. \_\_\_\_\_\_\_\_\_\_ |
| 24. \_\_\_\_\_\_\_\_\_\_ | 24. \_\_\_\_\_\_\_\_\_\_ | 24. \_\_\_\_\_\_\_\_\_\_ | 24. \_\_\_\_\_\_\_\_\_\_ |
| 25. \_\_\_\_\_\_\_\_\_\_ | 25. \_\_\_\_\_\_\_\_\_\_ | 25. \_\_\_\_\_\_\_\_\_\_ | 25. \_\_\_\_\_\_\_\_\_\_ |
| “Direct Store Delivery” Items | 26. \_\_\_\_\_\_\_\_\_\_ | 26. \_\_\_\_\_\_\_\_\_\_ | 26. \_\_\_\_\_\_\_\_\_\_ | 26. \_\_\_\_\_\_\_\_\_\_ |
| 27. \_\_\_\_\_\_\_\_\_\_ | 27. \_\_\_\_\_\_\_\_\_\_ | 27. \_\_\_\_\_\_\_\_\_\_ | 27. \_\_\_\_\_\_\_\_\_\_ |
| 28. \_\_\_\_\_\_\_\_\_\_ | 28. \_\_\_\_\_\_\_\_\_\_ | 28. \_\_\_\_\_\_\_\_\_\_ | 28. \_\_\_\_\_\_\_\_\_\_ |
| 29. \_\_\_\_\_\_\_\_\_\_ | 29. \_\_\_\_\_\_\_\_\_\_ | 29. \_\_\_\_\_\_\_\_\_\_ | 29. \_\_\_\_\_\_\_\_\_\_ |
| 30. \_\_\_\_\_\_\_\_\_\_ | 30. \_\_\_\_\_\_\_\_\_\_ | 30. \_\_\_\_\_\_\_\_\_\_ | 30. \_\_\_\_\_\_\_\_\_\_ |
| “Randomly Selected” Items | 31. \_\_\_\_\_\_\_\_\_\_ | 31. \_\_\_\_\_\_\_\_\_\_ | 31. \_\_\_\_\_\_\_\_\_\_ | 31. \_\_\_\_\_\_\_\_\_\_ |
| 32. \_\_\_\_\_\_\_\_\_\_ | 32. \_\_\_\_\_\_\_\_\_\_ | 32. \_\_\_\_\_\_\_\_\_\_ | 32. \_\_\_\_\_\_\_\_\_\_ |
| 33. \_\_\_\_\_\_\_\_\_\_ | 33. \_\_\_\_\_\_\_\_\_\_ | 33. \_\_\_\_\_\_\_\_\_\_ | 33. \_\_\_\_\_\_\_\_\_\_ |
| 34. \_\_\_\_\_\_\_\_\_\_ | 34. \_\_\_\_\_\_\_\_\_\_ | 34. \_\_\_\_\_\_\_\_\_\_ | 34. \_\_\_\_\_\_\_\_\_\_ |
| 35. \_\_\_\_\_\_\_\_\_\_ | 35. \_\_\_\_\_\_\_\_\_\_ | 35. \_\_\_\_\_\_\_\_\_\_ | 35. \_\_\_\_\_\_\_\_\_\_ |
| 36. \_\_\_\_\_\_\_\_\_\_ | 36. \_\_\_\_\_\_\_\_\_\_ | 36. \_\_\_\_\_\_\_\_\_\_ | 36. \_\_\_\_\_\_\_\_\_\_ |
| 37. \_\_\_\_\_\_\_\_\_\_ | 37. \_\_\_\_\_\_\_\_\_\_ | 37. \_\_\_\_\_\_\_\_\_\_ | 37. \_\_\_\_\_\_\_\_\_\_ |
| 38. \_\_\_\_\_\_\_\_\_\_ | 38. \_\_\_\_\_\_\_\_\_\_ | 38. \_\_\_\_\_\_\_\_\_\_ | 38. \_\_\_\_\_\_\_\_\_\_ |
| 39. \_\_\_\_\_\_\_\_\_\_ | 39. \_\_\_\_\_\_\_\_\_\_ | 39. \_\_\_\_\_\_\_\_\_\_ | 39. \_\_\_\_\_\_\_\_\_\_ |
| 40. \_\_\_\_\_\_\_\_\_\_ | 40. \_\_\_\_\_\_\_\_\_\_ | 40. \_\_\_\_\_\_\_\_\_\_ | 40. \_\_\_\_\_\_\_\_\_\_ |
| 41. \_\_\_\_\_\_\_\_\_\_ | 41. \_\_\_\_\_\_\_\_\_\_ | 41. \_\_\_\_\_\_\_\_\_\_ | 41. \_\_\_\_\_\_\_\_\_\_ |
| 42. \_\_\_\_\_\_\_\_\_\_ | 42. \_\_\_\_\_\_\_\_\_\_ | 42. \_\_\_\_\_\_\_\_\_\_ | 42. \_\_\_\_\_\_\_\_\_\_ |
| 43. \_\_\_\_\_\_\_\_\_\_ | 43. \_\_\_\_\_\_\_\_\_\_ | 43. \_\_\_\_\_\_\_\_\_\_ | 43. \_\_\_\_\_\_\_\_\_\_ |
| 44. \_\_\_\_\_\_\_\_\_\_ | 44. \_\_\_\_\_\_\_\_\_\_ | 44. \_\_\_\_\_\_\_\_\_\_ | 44. \_\_\_\_\_\_\_\_\_\_ |
| 45. \_\_\_\_\_\_\_\_\_\_ | 45. \_\_\_\_\_\_\_\_\_\_ | 45. \_\_\_\_\_\_\_\_\_\_ | 45. \_\_\_\_\_\_\_\_\_\_ |
| 46. \_\_\_\_\_\_\_\_\_\_ | 46. \_\_\_\_\_\_\_\_\_\_ | 46. \_\_\_\_\_\_\_\_\_\_ | 46. \_\_\_\_\_\_\_\_\_\_ |
| 47. \_\_\_\_\_\_\_\_\_\_ | 47. \_\_\_\_\_\_\_\_\_\_ | 47. \_\_\_\_\_\_\_\_\_\_ | 47. \_\_\_\_\_\_\_\_\_\_ |
| 48. \_\_\_\_\_\_\_\_\_\_ | 48. \_\_\_\_\_\_\_\_\_\_ | 48. \_\_\_\_\_\_\_\_\_\_ | 48. \_\_\_\_\_\_\_\_\_\_ |
| 49. \_\_\_\_\_\_\_\_\_\_ | 49. \_\_\_\_\_\_\_\_\_\_ | 49. \_\_\_\_\_\_\_\_\_\_ | 49. \_\_\_\_\_\_\_\_\_\_ |
| 50. \_\_\_\_\_\_\_\_\_\_ | 50. \_\_\_\_\_\_\_\_\_\_ | 50. \_\_\_\_\_\_\_\_\_\_ | 50. \_\_\_\_\_\_\_\_\_\_ |

**Price Verification Tally Sheet - Department Stores**

|  |  |  |  |
| --- | --- | --- | --- |
| “End of Aisle” or  “Tie-In Display” | **Identity** | **Location** | **Advertised** |
| 1. \_\_\_\_\_\_\_\_\_\_\_ | 1. \_\_\_\_\_\_\_\_\_\_\_ | 1. \_\_\_\_\_\_\_\_\_\_\_ |
| 2. \_\_\_\_\_\_\_\_\_\_\_ | 2. \_\_\_\_\_\_\_\_\_\_\_ | 2. \_\_\_\_\_\_\_\_\_\_\_ |
| 3. \_\_\_\_\_\_\_\_\_\_\_ | 3. \_\_\_\_\_\_\_\_\_\_\_ | 3. \_\_\_\_\_\_\_\_\_\_\_ |
| 4. \_\_\_\_\_\_\_\_\_\_\_ | 4. \_\_\_\_\_\_\_\_\_\_\_ | 4. \_\_\_\_\_\_\_\_\_\_\_ |
| 5. \_\_\_\_\_\_\_\_\_\_\_ | 5. \_\_\_\_\_\_\_\_\_\_\_ | 5. \_\_\_\_\_\_\_\_\_\_\_ |
| “Advertised Sale”  Items | 6. \_\_\_\_\_\_\_\_\_\_\_ | 6. \_\_\_\_\_\_\_\_\_\_\_ | 6. \_\_\_\_\_\_\_\_\_\_\_ |
| 7. \_\_\_\_\_\_\_\_\_\_\_ | 7. \_\_\_\_\_\_\_\_\_\_\_ | 7. \_\_\_\_\_\_\_\_\_\_\_ |
| 8. \_\_\_\_\_\_\_\_\_\_\_ | 8. \_\_\_\_\_\_\_\_\_\_\_ | 8. \_\_\_\_\_\_\_\_\_\_\_ |
| 9. \_\_\_\_\_\_\_\_\_\_\_ | 9. \_\_\_\_\_\_\_\_\_\_\_ | 9. \_\_\_\_\_\_\_\_\_\_\_ |
| 10. \_\_\_\_\_\_\_\_\_\_ | 10. \_\_\_\_\_\_\_\_\_\_ | 10. \_\_\_\_\_\_\_\_\_\_ |
| 11. \_\_\_\_\_\_\_\_\_\_ | 11. \_\_\_\_\_\_\_\_\_\_ | 11. \_\_\_\_\_\_\_\_\_\_ |
| 12. \_\_\_\_\_\_\_\_\_\_ | 12. \_\_\_\_\_\_\_\_\_\_ | 12. \_\_\_\_\_\_\_\_\_\_ |
| 13. \_\_\_\_\_\_\_\_\_\_ | 13. \_\_\_\_\_\_\_\_\_\_ | 13. \_\_\_\_\_\_\_\_\_\_ |
| 14. \_\_\_\_\_\_\_\_\_\_ | 14. \_\_\_\_\_\_\_\_\_\_ | 14. \_\_\_\_\_\_\_\_\_\_ |
| 15. \_\_\_\_\_\_\_\_\_\_ | 15. \_\_\_\_\_\_\_\_\_\_ | 15. \_\_\_\_\_\_\_\_\_\_ |
| Items on  “Special” | 16. \_\_\_\_\_\_\_\_\_\_ | 16. \_\_\_\_\_\_\_\_\_\_ | 16. \_\_\_\_\_\_\_\_\_\_ |
| 17. \_\_\_\_\_\_\_\_\_\_ | 17. \_\_\_\_\_\_\_\_\_\_ | 17. \_\_\_\_\_\_\_\_\_\_ |
| 18. \_\_\_\_\_\_\_\_\_\_ | 18. \_\_\_\_\_\_\_\_\_\_ | 18. \_\_\_\_\_\_\_\_\_\_ |
| 19. \_\_\_\_\_\_\_\_\_\_ | 19. \_\_\_\_\_\_\_\_\_\_ | 19. \_\_\_\_\_\_\_\_\_\_ |
| 20. \_\_\_\_\_\_\_\_\_\_ | 20. \_\_\_\_\_\_\_\_\_\_ | 20. \_\_\_\_\_\_\_\_\_\_ |
| 21. \_\_\_\_\_\_\_\_\_\_ | 21. \_\_\_\_\_\_\_\_\_\_ | 21. \_\_\_\_\_\_\_\_\_\_ |
| 22. \_\_\_\_\_\_\_\_\_\_ | 22. \_\_\_\_\_\_\_\_\_\_ | 22. \_\_\_\_\_\_\_\_\_\_ |
| 23. \_\_\_\_\_\_\_\_\_\_ | 23. \_\_\_\_\_\_\_\_\_\_ | 23. \_\_\_\_\_\_\_\_\_\_ |
| 24. \_\_\_\_\_\_\_\_\_\_ | 24. \_\_\_\_\_\_\_\_\_\_ | 24. \_\_\_\_\_\_\_\_\_\_ |
| 25. \_\_\_\_\_\_\_\_\_\_ | 25. \_\_\_\_\_\_\_\_\_\_ | 25. \_\_\_\_\_\_\_\_\_\_ |
| “Randomly Selected”  Items | 26. \_\_\_\_\_\_\_\_\_\_ | 26. \_\_\_\_\_\_\_\_\_\_ | 26. \_\_\_\_\_\_\_\_\_\_ |
| 27. \_\_\_\_\_\_\_\_\_\_ | 27. \_\_\_\_\_\_\_\_\_\_ | 27. \_\_\_\_\_\_\_\_\_\_ |
| 28. \_\_\_\_\_\_\_\_\_\_ | 28. \_\_\_\_\_\_\_\_\_\_ | 28. \_\_\_\_\_\_\_\_\_\_ |
| 29. \_\_\_\_\_\_\_\_\_\_ | 29. \_\_\_\_\_\_\_\_\_\_ | 29. \_\_\_\_\_\_\_\_\_\_ |
| 30. \_\_\_\_\_\_\_\_\_\_ | 30. \_\_\_\_\_\_\_\_\_\_ | 30. \_\_\_\_\_\_\_\_\_\_ |
| 31. \_\_\_\_\_\_\_\_\_\_ | 31. \_\_\_\_\_\_\_\_\_\_ | 31. \_\_\_\_\_\_\_\_\_\_ |
| 32. \_\_\_\_\_\_\_\_\_\_ | 32. \_\_\_\_\_\_\_\_\_\_ | 32. \_\_\_\_\_\_\_\_\_\_ |
| 33. \_\_\_\_\_\_\_\_\_\_ | 33. \_\_\_\_\_\_\_\_\_\_ | 33. \_\_\_\_\_\_\_\_\_\_ |
| 34. \_\_\_\_\_\_\_\_\_\_ | 34. \_\_\_\_\_\_\_\_\_\_ | 34. \_\_\_\_\_\_\_\_\_\_ |
| 35. \_\_\_\_\_\_\_\_\_\_ | 35. \_\_\_\_\_\_\_\_\_\_ | 35. \_\_\_\_\_\_\_\_\_\_ |
| 36. \_\_\_\_\_\_\_\_\_\_ | 36. \_\_\_\_\_\_\_\_\_\_ | 36. \_\_\_\_\_\_\_\_\_\_ |
| 37. \_\_\_\_\_\_\_\_\_\_ | 37. \_\_\_\_\_\_\_\_\_\_ | 37. \_\_\_\_\_\_\_\_\_\_ |
| 38. \_\_\_\_\_\_\_\_\_\_ | 38. \_\_\_\_\_\_\_\_\_\_ | 38. \_\_\_\_\_\_\_\_\_\_ |
| 39. \_\_\_\_\_\_\_\_\_\_ | 39. \_\_\_\_\_\_\_\_\_\_ | 39. \_\_\_\_\_\_\_\_\_\_ |
| 40. \_\_\_\_\_\_\_\_\_\_ | 40. \_\_\_\_\_\_\_\_\_\_ | 40. \_\_\_\_\_\_\_\_\_\_ |
| 41. \_\_\_\_\_\_\_\_\_\_ | 41. \_\_\_\_\_\_\_\_\_\_ | 41. \_\_\_\_\_\_\_\_\_\_ |
| 42. \_\_\_\_\_\_\_\_\_\_ | 42. \_\_\_\_\_\_\_\_\_\_ | 42. \_\_\_\_\_\_\_\_\_\_ |
| 43. \_\_\_\_\_\_\_\_\_\_ | 43. \_\_\_\_\_\_\_\_\_\_ | 43. \_\_\_\_\_\_\_\_\_\_ |
| 44. \_\_\_\_\_\_\_\_\_\_ | 44. \_\_\_\_\_\_\_\_\_\_ | 44. \_\_\_\_\_\_\_\_\_\_ |
| 45. \_\_\_\_\_\_\_\_\_\_ | 45. \_\_\_\_\_\_\_\_\_\_ | 45. \_\_\_\_\_\_\_\_\_\_ |
| 46. \_\_\_\_\_\_\_\_\_\_ | 46. \_\_\_\_\_\_\_\_\_\_ | 46. \_\_\_\_\_\_\_\_\_\_ |
| 47. \_\_\_\_\_\_\_\_\_\_ | 47. \_\_\_\_\_\_\_\_\_\_ | 47. \_\_\_\_\_\_\_\_\_\_ |
| 48. \_\_\_\_\_\_\_\_\_\_ | 48. \_\_\_\_\_\_\_\_\_\_ | 48. \_\_\_\_\_\_\_\_\_\_ |
| 49. \_\_\_\_\_\_\_\_\_\_ | 49. \_\_\_\_\_\_\_\_\_\_ | 49. \_\_\_\_\_\_\_\_\_\_ |
| 50. \_\_\_\_\_\_\_\_\_\_ | 50. \_\_\_\_\_\_\_\_\_\_ | 50. \_\_\_\_\_\_\_\_\_\_ |

**Price Verification Report I**

Page \_\_\_ of \_\_\_

**Inspection:**  [ ] 1st [ ] 2nd [ ] 3rd **Frequency:** [ ] Normal [ ] Increased **Type:**  [ ] Stratified [ ] Automated [ ] Randomized **Complaint:** [ ]

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Location of Test (Store Name, Address, County, ZIP Code): | | Date: | | | Telephone: | | | |
|  | | Manager: | | | Type of Store: | | | |
| Identity, Brand Name, Item or Style Number | Number of Items, Size, Location in Store, or  UPC Code | | Offered Price | | Price  Charged | | Error (±) | |
| 1. |  | | |  |  | |  | |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | | | | |
| 2. |  | | |  | |  | |  |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | | | | |
| 3. |  | | |  | |  | |  |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | | | | |
| 4. |  | | |  | |  | |  |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | | | | |
| 5. |  | | |  | |  | |  |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | | | | |
| 6. |  | | |  | |  | |  |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | | | | |
| 7. |  | | |  | |  | |  |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | | | | |
| 8. |  | | |  | |  | |  |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | | | | |

**Inspection Results:**

\_\_\_\_\_ (Sample Count) - \_\_\_\_\_ (#Not on File) = \_\_\_\_\_ (Adjusted Sample Count [ASC])

\_\_\_\_\_ (#Errors) ÷ \_\_\_\_\_ (ASC) =\_\_\_\_\_ (Error Percentage)

(Accuracy Percentage) = \_\_\_\_\_ % Overcharges/Undercharges Ratio = \_\_\_\_\_:\_\_\_\_\_

|  |  |
| --- | --- |
| **Inspector Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **Report Acknowledgement:** |
| Time In: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Time Out: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name/Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Comments/Remarks: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Comments/Remarks: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Price Verification Report I (completed sample)**

Page \_1\_ of \_1\_

**Inspection:**  [√]1st  [ ] 2nd [ ] 3rd **Frequency:** [√] Normal [ ] Increased **Type:**  [√] Stratified [ ] Automated [ ] Randomized **Complaint: [ ]**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Location of Test (Store Name, Address, County, ZIP Code)  ***Barkers Food Store*** | | Date: | | Telephone: | |
| ***Belle, New Jersey 31756*** | | Manager: | | Type of Store: | |
| Identity, Brand Name, Item or Style Number | Number of Items, Size, Location in Store, or  UPC Code | | Offered Price | Price Charged | Error (±) |
| 1. ***Smith Cake Mix*** | **32 oz. 313461346177** | | **3.19** | **4.19** | **+1.00** |
| [ ] Stop Sale Issued [√] Corrected | Comments: ***Sale sign not removed*** | | | | |
| 2. ***Natural Fruit Juice*** | **1 Liter 617369345619** | | **2.25** | **2.75** | **+.50** |
| [ ] Stop Sale Issued [√] Corrected | Comments: | | | | |
| 3. ***Clocks Soap*** | **8oz. 936125376558** | | **1.19** | **1.00** | **-.19** |
| [ ] Stop Sale Issued [√] Corrected | Comments: | | | | |
| 4. |  | |  |  |  |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | |
| 5. |  | |  |  |  |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | |
| 6. |  | |  |  |  |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | |
| 7. |  | |  |  |  |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | |
| 8. |  | |  |  |  |
| [ ] Stop Sale Issued [ ] Corrected | Comments: | | | | |

**Inspection Results:**

100 (Sample Count) - 0 (#Not on File) = 100 (Adjusted Sample Count [ASC])

3 (#Errors) ÷ 100 (ASC) = 3 (Error Percentage)

(Accuracy Percentage) = 97 % Overcharges/Undercharges Ratio = 2 : 1

|  |  |
| --- | --- |
| **Inspector Name:** \_\_ *T. Price*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **Report Acknowledgement:** |
| Time In: 8:15 Time Out: 9:30 | Name/Title:  *Chris Barker*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Comments/Remarks: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Comments/Remarks: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Price Verification Report II**

Page \_\_\_ of \_\_\_

**Inspection:** [ ] 1st [ ] 2nd [ ] 3rd  **Frequency:** [ ] Normal [ ] Increased **Complaint**: [ ]

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Location of Test (Name, Address, County, ZIP Code) | | | Date: | | | Telephone: | | |
| Manager: | | | Type of Store: | | |
| Item/Size or Style Number | Offered  Price | Price  Charged | Price  Error (±) |  | Item/Brand/Description/Code/Size | Offered  Price | Price  Charged | Price  Error (±) |
| 1. Identity: |  |  |  |  | 11. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 2. Identity: |  |  |  |  | 12. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 3. Identity: |  |  |  |  | 13. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 4. Identity: |  |  |  |  | 14. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 5. Identity: |  |  |  |  | 15. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 6. Identity: |  |  |  |  | 16. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 7. Identity: |  |  |  |  | 17. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 8. Identity: |  |  |  |  | 18. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 9. Identity: |  |  |  |  | 19. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 10. Identity: |  |  |  |  | 20. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |

**Inspection Results:**

\_\_\_\_\_ (Sample Count) - \_\_\_\_\_ (#Not on File) = \_\_\_\_\_ (Adjusted Sample Count [ASC]) Stop-Sale Order Issued? [ ]

\_\_\_\_\_ (#Errors) ÷ \_\_\_\_\_ (ASC) =\_\_\_\_\_ (Error Percentage)

(Accuracy Percentage) = \_\_\_\_\_ % Overcharges/Undercharges Ratio = \_\_\_\_\_:\_\_\_\_\_

|  |  |
| --- | --- |
| **Inspector Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­­\_ | **Report Acknowledgement:** |
| Time In: ­­­­­­ ­­­­­­ Time Out: | Name/Title: |
| Comments/Remarks: | Comments/Remarks: |
|  |  |

**Price Verification Report II (completed sample)**

Page \_1\_ of \_1\_

**Inspection:** [√] 1st [ ] 2nd [ ] 3rd **Frequency:** [√] Normal [ ] Increased **Complaint**: [ ]

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Location of Test (Name, Address, County, ZIP Code)  ***Mark Downtown Department Store***  ***11650 Main St.***  ***Alice, MN 61619*** | | | Date:  ***3/16/95*** | | | Telephone:  ***(614) 555-6146*** | | |
| Manager:  ***Jim Chester*** | | | Type of Store:  ***Department Store*** | | |
| Item/Size or Style Number | Offered  Price | Price  Charged | Price  Error (±) |  | Item/Brand/Description/Code/Size | Offered  Price | Price  Charged | Price  Error (±) |
| 1. Identity:***Sony Color TV*** |  |  |  |  | 11. Identity: |  |  |  |
| UPC/PLU: ***38569*** |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: ***Model 6136X*** | ***189.00*** | ***199.00*** | ***+10.00*** |  | Comments: |  |  |  |
| 2. Identity: ***Moore Lawn Mower*** |  |  |  |  | 12. Identity: |  |  |  |
| UPC/PLU:  ***31619*** |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: ***Shp with bagger*** | ***96.00*** | ***91.00*** | ***-5.00*** |  | Comments: |  |  |  |
| 3. Identity: ***Taft Rake*** |  |  |  |  | 13. Identity: |  |  |  |
| UPC/PLU: ***39916*** |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: ***Not on file*** | ***8.99*** |  |  |  | Comments: |  |  |  |
| 4. Identity: ***Calendar*** |  |  |  |  | 14. Identity: |  |  |  |
| UPC/PLU: ***615191*** |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: | ***5.50*** | ***7.10*** | ***+1.60*** |  | Comments: |  |  |  |
| 5. Identity: |  |  |  |  | 15. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 6. Identity: |  |  |  |  | 16. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 7. Identity: |  |  |  |  | 17. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 8. Identity: |  |  |  |  | 18. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 9. Identity: |  |  |  |  | 19. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |
| 10. Identity: |  |  |  |  | 20. Identity: |  |  |  |
| UPC/PLU: |  |  |  |  | UPC/PLU: |  |  |  |
| Comments: |  |  |  |  | Comments: |  |  |  |

**Inspection Results:**

50 (Sample Count) - 1 (#Not on File) = 49 (Adjusted Sample Count [ASC]) Stop-Sale Order Issued? [ ]

3 (#Errors) ÷ 49 (ASC) = 6 (Error Percentage)

(Accuracy Percentage) = 94 % Overcharges/Undercharges Ratio = 2 : 1

|  |  |
| --- | --- |
| **Inspector Name:** \_\_*Tim Marlowe*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Time In: 10:25 AM\_\_\_\_\_\_\_ Time Out: 4:45 PM\_\_\_\_\_­\_\_\_ | **Report Acknowledgement:** |
| Name/Title: \_*Jim Chester, Manager*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Comments/Remarks: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Comments/Remarks: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |

**VI. NCWM Policy, Interpretations, and Guidelines, Section 2**

Excerpts from NCWM Publication 3

**Table of Contents**

**Section Page**

[2.1.1. Weight(s) and/or Measure(s). 231](#_Toc400544752)

[2.1.2. Section 19(a), Identity. 232](#_Toc400544753)

[2.1.3. Definition of Net Weight. 232](#_Toc400544754)

[2.1.4. Offenses and Penalties, Sale of an Incorrect Device. 232](#_Toc400544755)

[2.1.5. Weight: Primary Mill Paper. 233](#_Toc400544756)

[2.2.1. Gift Packages. 233](#_Toc400544757)

[2.2.2. Sand. 233](#_Toc400544758)

[2.2.3. Sold by 4/5 Bushel. 234](#_Toc400544759)

[2.2.5. Lot, Shipment, or Delivery. 234](#_Toc400544760)

[2.2.6. Aerosols and Similar Pressurized Containers. 235](#_Toc400544761)

[2.2.7. Aerosol Packaged Products. 236](#_Toc400544762)

[2.2.8. Variety and Combination Packages. 237](#_Toc400544763)

[2.2.9. Textile Products. 238](#_Toc400544764)

[2.2.10. Yarn. 239](#_Toc400544765)

[2.2.11. Tint Base Paint. 240](#_Toc400544766)

[2.2.12. Reference Temperature for Refrigerated Products: When a Product is Required to be Maintained under Refrigeration. 240](#_Toc400544767)

[2.2.13. Declaration of Identity: Consumer Package (UPLR) and 1.5.1. in Combination with Other Foods   
(UMSCR). 240](#_Toc400544768)

[2.2.14. Typewriter and Computer Printer Ribbons and Tapes. 241](#_Toc400544769)

[2.3.1. Instant Concentrated Products. 242](#_Toc400544770)

[2.3.2. Fresh Fruits and Vegetables. 242](#_Toc400544771)

[2.3.3. Cardboard Cartons. 244](#_Toc400544772)

[2.3.4. Catalyst Beads. 245](#_Toc400544773)

[2.3.5. Incense. 245](#_Toc400544774)

[2.3.6. Sea Shells. 245](#_Toc400544775)

[2.3.7. Tire Tread Rubber Products. 245](#_Toc400544776)

[2.3.8. Wiper Blades. 246](#_Toc400544777)

[2.3.9. Fireplace Logs. 246](#_Toc400544778)

[2.3.11. Packaged Foods or Cosmetics Sold from Vending Machines. 246](#_Toc400544779)

[2.3.12. Movie Films, Tapes, Cassettes. 247](#_Toc400544780)

[2.3.13. Vegetable Oil. 247](#_Toc400544781)

[2.3.15. Bulk Sales. 247](#_Toc400544782)

[2.5.6. Guidelines for NCWM Resolution of Requests for Recognition of Moisture Loss in Other Packaged   
Products. 249](#_Toc400544783)

[2.6.1. Retail Gas Sales and Metric Price Computations in General. 252](#_Toc400544784)

[2.6.2. Price Posting. 252](#_Toc400544785)

[2.6.3. Octane Posting Regulations. 254](#_Toc400544786)

[2.6.4. Multi-Tier Pricing: Motor Fuel Deliveries (Computing Pumps or Dispensers). 255](#_Toc400544787)

[2.6.5. Cereal Grains and Oil Seeds. 256](#_Toc400544788)

[2.6.6. Basic Engine Fuels, Petroleum Products, and Lubricants Laboratory. 256](#_Toc400544789)

[2.6.7. Product Conformance Statements. 257](#_Toc400544790)

[2.6.8. Commodities Under FTC Jurisdiction under the Fair Packaging and Labeling Act and Exclusions. 257](#_Toc400544791)

[2.6.9. Size Descriptors for Raw, Shell-On Shrimp Products. 264](#_Toc400544792)

[2.6.10. Model Guidelines for the Administrative Review Process. 264](#_Toc400544793)

[2.6.11. Good Quantity Control Practices. 267](#_Toc400544794)

[2.6.12. Point-of-Pack Inspection Guidelines. 267](#_Toc400544795)

[2.6.13. Guideline for Verifying the Labeled Basis Weight of Communication and Other Paper. 270](#_Toc400544796)

[2.6.14. Labeling Guidelines for Chamois. 274](#_Toc400544797)

[2.6.15. Labeling Guidelines for Natural and Synthetic Sponges. 277](#_Toc400544798)

[2.6.16. Minimum Fuel Flush for Octane Verification. 281](#_Toc400544799)

**NCWM Policy, Interpretations, and Guidelines**

###### Introduction

This section of the handbook includes NCWM interpretations, policies, recommendations, inspection outlines, and information on issues that have come before the Conference. Several sections include information on federal requirements related to the uniform laws and regulations presented in the handbook. The purpose of this section is to assist users in understanding and applying the uniform regulations and to guide administrators in implementing new programs or procedures. The guidelines or recommendations provided should not be construed to redefine any state or local law or limit any jurisdiction from enforcing any law, regulation, or procedure (unless the section describes a specific federal regulation that preempts local requirements).

(Added 1997)

2.1.1. Weight(s) and/or Measure(s).

(L&R, 1985, p. 77)

The measuring elements of a point-of-sale system are “weights and/or measures.” Errors in pricing when found in point-of-sale systems come under “Misrepresentation of Pricing” in the weights and measures law and are under the jurisdiction of weights and measures.

**Background**

A recommendation was made to change the definition of “weights and measures” in the Uniform Weights and Measures Law to specifically define a scanner or point-of-sale system as under weights and measures jurisdiction.

Several state representatives said that they had enforcement problems when a scanner or point-of-sale system was being used and when the price marked on an item (or on the shelf) was not the same as the price printed on the receipt. These officials believe that unless the law specifically defines these devices as “weights and measures,” they have no jurisdiction over the devices’ function.

The Committee disagreed. The NCWM Uniform Weights and Measures Law has a section that forbids the practice of a different price on the retail shelf as compared with the price provided by a scanner. Section 15 of the Uniform Weights and Measures Law reads:

*No person shall misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.*

This section (plus Section 14 forbidding misrepresentation of quantity), if enacted by a state, already provides enforcement authority over scanners and point-of-sale systems.

In addition, the Committee does not want to set a precedent by listing by name the types of devices that might be considered weights and measures devices. This might provide a potential “loop-hole” for those devices not specifically listed. Finally, the Committee members pointed out that it is the human element (the person reading in data or receiving price updates) that introduces the discrepancies in shelf and receipt prices rather than any inherent incapability of the reading device or scanner. Therefore, it is much more effective to forbid the practice of mispricing rather than focus on a single device or apparatus as the means for obtaining compliance.

**2.1.2. Section 19(a), Identity.**

(L&R Committee, 1986, p. 143)

Packaged food not containing meat or poultry does not have to have an identity statement if the identity of the commodity can easily be identified through the wrapper or container.

**Background**

Virginia Weights and Measures recommended revision to Section 19(a) of the Uniform Weights and Measures Law (UWML) to eliminate the exemption of an identity statement from packages when the item “can easily be identified through the wrapper or container.” The Committee is of the opinion that there is merit in retaining the language in Section 19(a) of the Uniform Law. Packages of fresh product packaged in a retail establishment are considered to be packages as long as a price is attached. If the exemption were eliminated, such packages instead of being marked, for example, “12/89 cents” would have to be marked “lemons, 12/89 cents.” It was argued that there could be a problem in deciding whether or not a commodity could “easily be identified” (such as might occur in an ethnic specialty grocery or with an exotic produce item). In researching the issue, the Committee has determined that Title 21, Section 101.100(b)(3) of the Code of Federal Regulations specifically exempts the food identity statement from having to appear “. . . if the common or usual name of the food is clearly revealed by its appearance.” Since no specific problems of enforcement were brought to the attention of the Committee concerning this issue, the Committee recommends no change to Section 19(a) at this time. However, the Committee recommends that Section 3.1. and 4. of the Uniform Packaging and Labeling Regulation be noted as follows:

*Section 19(a) of the Uniform Weights and Measures Law, and 21 CFR 101.100(b) (3) for non-meat and non-poultry foods, specifically exempt packages from identity statements if the identity of the commodity “can easily be identified through the wrapper or container.”*

2.1.3. Definition of Net Weight.

(L&R, 1987, p. 123)

1. It is the intent of this definition to include truck-loads of commodities, not just packages (“containers”).

2. It is not the intent to define the net weight of packaged goods as requiring dry tare (“. . . excluding . . . substance(s) not considered to be part of the commodity” could just as well be interpreted as excluding liquids not considered part of the commodity at the time of sale).

3. It is also the intent to permit more specific definitions as the occasion warrants (“. . . material(s) . . . not considered . . . part of the commodity” might include dirt or “foreign material” in a commodity).

2.1.4. Offenses and Penalties, Sale of an Incorrect Device.

(L&R, 1987, p. 124)

A jurisdiction seeking to enforce the provision of the Uniform Weights and Measures Law that prohibits the sale of an incorrect device would have to show that the seller knowingly sold or offered for sale for use in commerce an incorrect weight or measure. Under Section 22, a seller would not be responsible for actions taken by the purchaser or distributor, in which the seller did not participate or have prior knowledge. Thus, the seller would not be liable:

(1) if a purchaser or distributor modified a scale obtained from a seller; or

(2) if a scale were used in trade after the seller informed the purchaser that the scale was not appropriate for that use.

In cases such as those noted above, the Committee feels that the seller would be protected from prosecution. Only sellers who knowingly violate the provision would be subject to prosecution.

2.1.5. Weight: Primary Mill Paper.

(L&R, 1990, p. 81)

**Interpretation**

Non-consumer sales of “primary mill paper” were discovered by weights and measures officials to be labeled and invoiced on what was called a “gross weight” basis. Primary mill paper is produced for commercial or industrial companies for subsequent additional processing, such as paper for newspaper or magazine publishers or sanitary tissue manufacturers. The primary mill paper is cut from “parent rolls” but is still a commercial-sized item weighing from several hundred to several thousands of pounds.

The key to understanding the longstanding trade practice is that the purchaser of such paper specifies not only the quality of the paper being purchased, such as the thickness, surface coating, etc., but the purchaser also specifies the core around which the paper is to be wound, the type of overwrap, the number of overwraps, and such other requirements that will ensure receipt of the primary mill paper in proper condition for subsequent processing. The weight of the core and wrapping is approximately 1 % of the gross weight. It is recycled by the purchasers in their own or other paper recovery or reuse systems.

Having reviewed the practices in the industry in the specification and purchasing of primary mill paper, the Committee concludes that the true product is the paper plus the packaging (in order to assure maintenance of quality) and an appropriate core (to ensure a fit on the recipient’s equipment). Therefore, in the Committee’s opinion, the sale of primary mill paper is not at all on a gross weight basis. This is and has been a misnomer. The true identity of the purchased product has been misunderstood by weights and measures authorities, further compounded by the industry use of the term “gross weight.” The product is the primary mill paper plus the core and overwrap specified by the purchaser.

The Committee, therefore, believes that the industry should review its invoicing and labeling to clarify that the weight of the specified product is the weight of the primary mill paper, core, and overwrap. Although this weight is the gross weight of the entire item as produced and shipped, it is the net weight of the item as specified by the purchaser.

This interpretation applies only to primary mill paper and is not intended to be applied to all non-consumer products ordered by specification; it is a narrow interpretation applying to the specific method of sale in this trade where the service of packaging and the packaging is part of the purchase.

2.2.1. Gift Packages.

(Resol. 1975, p. 237)

See also Interpretation 2.2.8.

**Interpretation**

Seasonal gift packages are often put up in retail stores in baskets and other decorative containers using cellophane or other clear flexible wrap to enclose a number of similar or dissimilar prepackaged items (for example: cheese, jellies, sausages, wine, fruit, etc.). The resulting combination or variety package must have a legally conforming label including the net contents statement.

2.2.2. Sand.

(L&R, 1978, p. 151)

**Interpretation**

Sand put up in permanent wooden bins is a consumer package and must be labeled with all mandatory information as required by the Uniform Packaging and Labeling Regulation.

**Background**

The State of Hawaii raised the issue of the sale of sand in permanent wooden bins and sold by price per cubic measure. The Committee agrees with Hawaii that the sale of sand in this manner is subject to the Uniform Packaging and Labeling Regulation, under the definition of “Consumer Package” (Section 2.2. of the Uniform Packaging and Labeling Regulation) and that no further action is needed.

2.2.3. Sold by 4/5 Bushel.

(L&R, 1974, p. 220)

**Interpretation**

The trade practice of crating citrus fruit in 4/5 bushel units is a long-standing one. It is not intended to be a consumer package. If offered as a consumer package, the general consumer usage and trade custom in the particular state would have to be explored:

Section 6.10.(b)(1) of the Uniform Packaging and Labeling Regulation would permit a declaration employing different fractions in the net quantity declaration other than those permitted under Section 6.10.(b) if there exists a firmly established practice of using 4/5 bushel in consumer sales and trade custom.

**Background**

It has been called to the attention of the Committee that certain commodities are being sold to consumers in “unacceptable” fractional units of dry measure in violation of Section 6.10. of the Uniform Packaging and Labeling Regulation. Specifically, the Committee has been asked for an interpretation as to whether the packaging of oranges in a 4/5 bushel, which is later sold unweighed to a consumer, is a violation of the binary submultiple principle as implied in Section 6.10.(b). Some Committee members asserted that a clear exception exists under Section 6.10.(b)(1) which applies to this long established tradition of crating citrus fruit in 4/5 of a bushel. Approximately 85 % of this fruit is sold by this trade practice. Additionally, it was asserted that the packager never intended the 4/5 bushel to be a consumer package, but if the 4/5 bushel of citrus fruit is sold to consumers, this would be a matter between the appropriate state or local official and the retailer.

The consensus of the Committee is that this action of the packagers is not in violation of the indicated section.

**2.2.5. Lot, Shipment, or Delivery.**

(L&R, 1981, p. 95)

**Policy**

The requirements for the average package net contents to meet or exceed the labeled declaration may be applied to production lots, shipments, or deliveries. Shipments or deliveries are smaller collections of packages than production lots that may or may not consist of mixed lot codes.

Emphasis in inspection activities should be placed on warehouse and in plant testing without neglecting retail consumer protection.

**Background**

The Committee heard a petition from the California Brewers Association to define a lot as:

*…a selection of containers under one roof produced by a single company of the same size, type and style, manufactured or packed under similar conditions with a minimum number to be equivalent to one production line shift.*

The intention of the petition is to focus Weights and Measures enforcement on production lots as opposed to small collections of packages on retail shelves, because the production lot is under the control of the packager.

An alternative proposal was made that would require mingling of lot and date codes in package inspection at warehouse locations.

The Committee has reviewed the proposals in light of Section 7.6. and Section 12.1. of the Uniform Packaging and Labeling Regulation which refers to “shipment, delivery, or lot.” If the petition is approved, the terms “shipment” and “delivery” would have to be dropped from this Uniform Regulation.

The Committee recognizes the inherent value of in-plant and warehouse inspection and is of the opinion that, wherever possible, such inspections should be carried out. At the same time, the Committee recognizes the need for the state and local weights and measures officials to protect the consumer at the level where the ultimate sale is made. Therefore, the Committee recommends no change to the Uniform Regulation.

The Committee looks forward to the work of the Special Study Group on Enforcement Uniformity of the NCWM which will be exploring the mechanisms that might be instituted to make in-plant inspection workable.

**2.2.6. Aerosols and Similar Pressurized Containers.**

(L&R, 1976, p. 248)

See also Guideline 2.2.7.

**Interpretation**

It is the opinion of the NCWM that an FDA opinion as expressed in the Fair Packaging and Labeling Act Manual Guide FDA 7563.7, not objecting to volume declarations on aerosol products, does not supersede or preempt state requirements that aerosols be labeled by net weight.

**Background**

The Department of Commerce through the Office of Weights and Measures of the National Institute of Standards and Technology, under its statutory responsibility for “cooperation with the states in securing uniformity in weights and measures laws and methods of inspection,” developed Section 10.3.

**10.3.** **Aerosols and Similar Pressurized Containers.** – The declaration of quantity on an aerosol package and on a similar pressurized package shall disclose the net quantity of the commodity (including propellant), in terms of weight, that will be expelled when the instructions for use as shown on the container are followed.

Several states, which are among the 32 that have adopted the Uniform Packaging and Labeling Regulation, indicated that pressurized cans were currently being marked by volume rather than by weight as required above. Industry representatives indicated that according to the FDA, they are permitted to mark this type of container by volume and that for competitive purposes they will continue to do so. The NCWM was asked to contact FDA and inform them that a declaration of volume on pressurized containers is not acceptable to the states since it cannot be verified.

A meeting was requested to express NIST/NCWM’s concern over the FDA position on quantity of contents declarations on aerosols, which is found in the Fair Packaging and Labeling Act (FPLA) Manual Guide FDA 7563.7. This Guide states that in the past, the FDA has not objected to the use of units of volume to declare the net contents of aerosol preparations that would be liquid if not combined with the propellant and a net weight statement in avoirdupois units for products that would be solids if not combined with a propellant. The FDA was asked to modify its position to provide that existing state regulations (concerning aerosol quantity of contents declarations) are not superseded by FDA Guidelines. FDA officials stated that the FDA would consider the request, but it did not appear at the time of the Interim Meetings that the FDA would make any statement to modify its position without following its administrative procedures and permitting interested parties to exhaust every element of due process.

One industry representative stated that there has been a good deal of concern that fluorocarbon propellants may in the long run cause the partial destruction of the ozone layer in the upper atmosphere surrounding the earth, and that the diminution of the ozone layer would have adverse effects on human health. Therefore, they have converted to new formulations which eliminate fluorocarbon propellants. As a result of this conversion to a non-fluorocarbon propellant system, which uses a propellant with a much lower density than that of the usual fluorocarbon propellants, continued use of a weight measure would be highly misleading to the consumer. Therefore, some spray labels have been changed so as to denote the contents in terms of fluid measure, rather than in terms of weight measure.

The industry representative stated that if manufacturers were to be required to use weight measure, consumers would be deceived into buying products, such as hair spray, with large amounts of fluorocarbon that vaporizes before it reaches the hair. Consumers prefer products with a large amount of base. Industry further indicated that they wanted to avoid a confrontation with the states over this issue and believe that the matter can readily be resolved without the need for litigation. Although the use of fluid measure on the principal panel will give consumers the most helpful information at the point of purchase, the industry would have no objection to putting the net weight on the back of the label.

The Committee wants to commend FDA for their interest in this matter and the manufacturers who seek to improve their product and its labeling information. The Committee is also encouraged to work with all interested parties to resolve this issue. However, the Committee does not believe that mere guidelines can preempt a Uniform Regulation developed under the technical authority of the federal agency delegated by Congress and adopted by the states through its representatives, no matter how broad the preemptive clause of an act might be. Additionally, the Committee cannot support open and notorious violations of state regulations where those violations occurred prior to bringing the issue before the Conference. Therefore, the Committee believes that NCWM should support a firm stand by the states that their regulations must be respected.

2.2.7. Aerosol Packaged Products.

(Liaison, 1979, p. 239)

See also Guideline 2.2.6.

**Policy**

The NCWM recommends all aerosol packages be labeled by net weight. FDA permits volume declarations. The NCWM has requested the FDA to change its regulations and revise its interpretation of these regulations.

**Substance of Petition**

The NCWM petitions the FDA to make the necessary changes to their regulations and interpretation of 21 CFR 101.105(g) as appearing in the FDA Fair Packaging and Labeling Manual Guide, 7563.7 pertaining to the quantity of contents declaration on aerosol packaged products. It is requested that the net quantity statement on aerosol packaged products or similar pressurized packages be made in terms of net weight only. The reasons for recommending such changes are as follows:

1. Net quantity labeling of aerosol packaged products in terms of net weight is a firmly established trade practice for such products.

2. Net quantity labeling of aerosol packaged products in terms of volume is difficult (if not impossible) to verify with consumer verification methods or by conventional package inspection methods. State or local enforcement action is discouraged by such labeling.

3. Since the labeling of aerosol packaged products by volume cannot be compared with the labeling of such products in terms of net weight, labeling in terms of volume and weight inhibits value comparisons and causes consumer confusion with respect to the quantity of product the consumer is buying and can be a form of deceptive labeling.

4. Uniformity between all state and federal regulations is highly desirable for both enforcement and fair competition in the marketplace. The Uniform Packaging and Labeling Regulation and the FTC and EPA Regulations require net quantity labeling of aerosol packaged products in terms of net weight.

2.2.8. Variety and Combination Packages.

(L&R, 1982, p. 149)

See also Guideline 2.2.1.

**Interpretation**

(a) Seasonal gift packages are “variety packages” within the meaning of the Uniform Packaging and Labeling Regulation if they contain “reasonably similar commodities” (such as various fruits). They are “combination packages” if they contain “dissimilar commodities” (such as wine, fresh fruit, and jellies). Variety package labels must declare the total quantity in the package. Combination package labels must declare a quantity declaration for each portion of dissimilar commodities.

(b) The example provided with Section 10.6., Variety Packages, of the Uniform Packaging and Labeling Regulation, shows a total quantity declaration and individual declaration for each type of commodity. The individual declaration is not required but is encouraged.

Background

The Committee reviewed Section 10.5 and Section 10.6 of the Model Packaging and Labeling Regulation in order to determine the need for further clarification. Several questions have arisen over the years with respect to:

(1) What are the net contents labeling requirements for seasonal gift packages composed of varying types of commodities or goods all combined into one package?

(2) Is the example provided in Section 10.6. entirely in keeping with the declaration requirements? (This section requires that total net contents be declared, but the example shows both total and individual net contents.)

The Committee believes that there is no need to modify these sections, but the discussions below may serve as guidance to enforcement officials and packagers on these sections.

Concerning labeling requirements for seasonal gift packages, it must first be determined what the individual units comprising each package are. The following examples are possibilities:

(a) individual packages of sausage, individual packages of cheese;

(b) several kinds of fruit of different weights; and

(c) several kinds of fruit, bottle of wine, several packages of cheese.

Examples (a) and (c) above are combination packages and should be labeled with net quantities of each unit or type of unit. It is possible to combine fruit net weight (or count if appropriate) as one declaration, cheese net weight as a second declaration, etc.

Example (b) above is a variety package and must be labeled with the total net weight or count (as appropriate) of fruit in the package. It is also reasonable for packagers to include, for full consumer information, a declaration of the individual net contents of each type of package or item in the gift package although this latter declaration is not required (e.g., 1 lb bananas, 3 pears). This is also the key to the second question asked above concerning the example provided in Section 10.6.; that is, although a declaration of individual item net contents is not required, packagers are encouraged to provide additional information wherever useful to the consumer.

2.2.9. Textile Products.

(L&R, 1977, p. 215)

**Interpretation**

(a) When a range of widths (e.g., 58/60) appears on the label of bolts or rolls for yard goods, enforcement action should be taken whenever the action width falls below the lesser of the two widths given as the range (in the example above, when the fabric width is less than 58 in).

(b) Section 10.9.3. Textiles: Variations from Declared Dimensions of the Uniform Packaging and Labeling Regulation is not to be interpreted as providing tolerances. The average requirement must be met. The average quantity of contents of a lot, shipment, or delivery must equal or exceed the declared dimensions. Dimensions of individual packages of textiles may vary as much as Section 10.9.3. permits, but the average requirement must still be met.

**Background**

The State of California and the American Textile Manufacturers Institute asked the NCWM Laws and Regulations Committee and the National Institute of Standards and Technology to assist in the resolution of two textile-product issues. In the first issue California asks for help in correcting a short measure condition, apparently a nationwide problem, which has been found in the packaging and labeling of textile yard goods put up on bolts or rolls.

The problem is outlined as follows:

1. Approximate width measurements are being used by some manufacturers in their label declarations.

**Example:**

58/60 in (inch) width.

2. Label declarations are false and misleading in that actual amounts are less than the quantity represented on the label.

3. Section 10.9.3. of the Uniform Packaging and Labeling Regulation is extremely vague as to its intent and true meaning. Are the substantial variations (3 % and 6 %); (6 % and 12 %) permitted as product tolerances, or are they maximum unreasonable minus and plus errors to be allowed when sampling the product for quantity when using Handbook 67?

California favors the repeal or clarification of Section 10.9.3. and suggests amending Section 10.9.2.(k) to read:

The quantity statement for packages of textile yard goods packaged on the bolt or roll for either wholesale or retail shall state its net measure in terms of yards for the length and width of the item, or its net weight in terms of avoirdupois pounds or ounces, or in terms of their metric equivalent.

During the Interim Meetings, a representative of the American Textile Manufacturers Institute (ATMI) informed committee members that the proposal to identify the width of yard goods with a single measurement (as opposed to a range) would be given serious consideration by their members, after which a recommendation will be finalized and submitted to the Laws and Regulations Committee.

After the Interim Meetings, the National Home Sewing Association said that if a single width declaration is required, the following could result:

(a) No change in manufacturing process would be effectuated; only the size declaration on bolts would be changed.

(b) Short measure problems could be created because consumers would look for the fabric to be exactly the stated width. Because the manufacturing processes were not changed, the width is actually the same as it was with the range declaration.

(c) Increased cost to manufacturers would result. One loom is used for many different fibers now; a single width declaration could create a need for many looms for each of the different fibers, thereby imposing “pass-along” costs to consumers.

(d) Consumer deception would be fostered in that a single declaration implies actual measurement.

California officials state that roll or bolt fabric should be labeled accurately with a single declaration. Additionally, they believe that industry does have enough shrinkage data on fibers used in the manufacturing processes, and thus could provide accurate measurement declaration on finished fabrics or materials.

The Committee believes that accurate quantity information should be provided on consumer products; however, no labeling changes should be required until patterns and yard goods are marketed in metric units. At that time, all measures shall be singularly stated (eliminating dual numbers) and, until that time, any products where size declaration is a range and found to be less than the smaller of the range declaration shall be subject to enforcement action. For example, a product marked “58 to 60 in” and found to be less than 58 inches should be considered to be in violation of weights and measures laws and/or regulations.

Additionally, the Committee affirms that the intent of the Variations from Declared Dimensions permitted in Section 10.9.3. in no way eliminates the requirement that quantity declarations for textiles must, on the average, not be less than declared declarations.

2.2.10. Yarn.

(L&R, 1983, p. 153)

**Interpretation**

The appropriate net contents declaration for yarn is weight.

**Background**

A consumer has requested that the net quantity statement for yarn be changed from weight to length. The proposal is based on the consumers’ use of the product, darker colors often weigh more per unit of length. Therefore, they found that a lighter color yarn will “go farther” in craft applications than a darker yarn; consumers indicate that it is difficult to predict how much yarn of varying colors to purchase based on a weight declaration. The Committee is sympathetic to the request but must support existing labeling requirements for several reasons.

Yarn, by nature, is extremely stretchy; in order to label yarn by length, a specified tension would have to be applied in order to make any repeatable length measurement. Such a tension would have to be agreed upon by all the yarn manufacturers, and they would have to apply to compliance testing of product by weights and measures officials. Even if this tension “standard” were negotiated and decided upon, it would have little real meaning in use by needle crafters, knitters, and others. The tension applied to yarn in use varies from user to user and from application to application; therefore, the length also varies. Not only does dyeing yarn change the weight, dyeing also changes the length of yarn. For these reasons, industry representatives also support the requirements as they presently are written in the Uniform Packaging and Labeling Regulation.

The Committee recognizes the difficulty of working with this product and suggests that users of yarn consider buying an excess of the yarn over what is expected to be used in any application. The consumers should find out before purchase if, after finishing the product, they can return the unopened skeins to the retailers from whom the skeins were purchased.

2.2.11. Tint Base Paint.

(L&R, 1986, p. 146)

Section 11.23. of the Uniform Packaging and Labeling Regulation currently permits tint base paints (paints to which colorant must be added prior to sale) to be labeled in terms of the volume (a quart or gallon) that will be delivered to the purchaser after addition of the colorant only if three conditions are met:

1. “the system employed ensures that the purchaser always obtains a quart or a gallon”;

2. “a statement indicating that the tint base paint is not to be sold without the addition of colorant is presented on the principal display panel;” and

3. “the contents of the container, before the addition of colorant, is stated in fluid ounces elsewhere on the label.”

2.2.12. Reference Temperature for Refrigerated Products: When a Product is Required to be Maintained under Refrigeration.

(L&R, 1990, p. 86)

**Background**

Section 6.5.(b) was revised to clarify that the reference temperature of 4.4 ºC (40 ºF) applies only to products that must be refrigerated to maintain product quality, rather than to items, such as carbonated soft drinks, that are refrigerated for the purchaser’s convenience.

**Guideline**

The Committee also discussed how an inspector could decide whether a product under refrigeration is required to be maintained under refrigeration. The following guidelines are provided:

1. The traditional food items that normally require refrigeration and are found in refrigerated cases will not ordinarily have any statement about requiring refrigeration. These items include milk, orange juice, and similar products. They may be tested at any temperature at, above or below their reference temperature of 40 ºF (4 ºC) because such products are at their maximum density at their reference temperature, and the volume of such products will always increase at higher or lower temperatures. Thus any errors made by not measuring at the exact reference temperature will be in the favor of the packer.

2. Food items that normally require refrigeration, but which are processed so as not to require refrigeration prior to opening, will have “refrigerate after opening” or similar wording on the label. Such items as milk and orange juice can be found in this category as well as in the “refrigeration required” category. The two categories can be distinguished by the “refrigerate after opening” statement, which calls for testing at or above their reference temperature of 68 ºF (20 ºC).

3. Food items that are not expected to require refrigeration, but which may be refrigerated for the convenience of the consumer (such as carbonated beverages), are to be tested at temperatures of 68 ºF (20 ºC) or above even when found refrigerated for the convenience of the consumer.

2.2.13. Declaration of Identity: Consumer Package (UPLR) and 1.5.1. in Combination with Other Foods (UMSCR).

(L&R, 1990, p. 93)

**Background**

Many food products are made by the retail store and labeled with names that may or may not have standards of identity or standards of composition in federal regulation or policy (for example, chicken cordon bleu). Weights and measures officials need to know which names have standards of identity that must be followed in formulating the product and, therefore, in providing the ingredient statement.

**Food Standards**

The U.S. Department of Agriculture’s Food Safety and Inspection Service (USDA - FSIS) and the U.S. Department of Health and Human Services’ FDA share the responsibility of assuring truthful and accurate information on product labels. USDA - FSIS has responsibility for the development and application of the labeling requirements applicable to meat and poultry products containing more than 3 % fresh meat or at least 2 % cooked poultry meat. FDA oversees the labeling of most other food products.

**USDA Standards of Identity and Composition**

USDA has statutory authority to establish standards of identity for meat and poultry products. A standard of identity prescribes a manner of preparation and the ingredients of a product that is labeled with a particular name. A food that bears the name of a standardized food that does not satisfy the requirements of the applicable standard is misbranded. Examples of standardized products include: “Ham,” “Ham Water Added,” “Hot Dogs,” “Chicken and Noodles,” and “Spaghetti Sauce with Meatballs.”

Almost all standards enforced by FSIS are called “standards of composition.” These standards identify the minimum amount of meat or poultry required in a product’s recipe. For example, the standard of composition for “beef a la king” states that, if a product carries this name on its label, at least 20 % cooked beef must be used in the recipe.

But standards of composition do not prevent a manufacturer from increasing the meat or poultry content or adding other ingredients to increase a product’s appeal. For instance, a processor has the option of using more than the required amount of beef in beef a la king and adding other ingredients to make the product unique**.** A listing of meat and poultry content and labeling requirement including terms that are further defined can be found in the USDA FSIS Food Standards and Labeling Policy book which is available at [www.fsis.usda.gov/OPPDE/larc/Policies/Labeling\_Policy\_book\_082005.pdf](http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_book_082005.pdf).

**Label Approval**

Food manufacturers are responsible for compliance with the FSIS labeling rules and adherence to the process maintained by FSIS for the evaluation and approval of meat and poultry product labels. This Guide provides the basic information necessary to devise a label for meat and poultry products and to understand the regulatory process administered by FSIS. A Guide to Federal Food Labeling Requirements for Meat and Poultry Products (2007) URL is located at [www.fsis.usda.gov/PDF/Labeling\_Requirements\_Guide.pdf](http://www.fsis.usda.gov/PDF/Labeling_Requirements_Guide.pdf).

* + 1. Typewriter and Computer Printer Ribbons and Tapes.

(L&R, 1991)

**Interpretation**

Typewriter and computer printer ribbons must be labeled by length. In addition, character yield information may be disclosed on the principal display panel.

**Background**

Packages of typewriter and computer printer ribbons and tapes have been found in the marketplace with no declaration of quantity of any kind. There is information on the package about the type of machine the ribbon or tape is designed to fit, but this is not a declaration of quantity. Purchasers have been misled as a result of the failure of some manufacturers to disclose the length; ribbons designated for a particular machine may be sold at a low price, but with substantially less length than ribbons ordinarily produced for the machine.

2.3.1. Instant Concentrated Products.

(L&R, 1977, p. 219)

**Interpretation**

No additional net contents information (other than weight) is required for instant coffee, tea, and cocoa.

**Background**

It was proposed that certain products, such as instant coffee, tea, and cocoa, should have a dual statement of weight including the number of cups (e.g., makes ten 6 oz cups).

The National Coffee Association of U.S.A., Inc., offered the following comments:

1. The number of servings of instant coffee will depend upon the size of the cup involved and the taste of the individual consumer.
2. The size of a cup will vary widely, ranging from a small “demitasse” cup to a large coffee mug.
3. The taste of the individual consumer defies definition because it will vary as widely as the number of individuals considered. Market research shows many like it “strong and black” and others prefer it “mild and thin.”
4. Any statement placed on a container of instant coffee that represents that the consumer will be able to obtain a specified number of servings would be arbitrary, confusing and, in a very sense, deceptive.
5. In view of the foregoing, any such requirements that the number of servings be listed on a container of instant coffee might expose the manufacturer to complaints from consumers that it was engaging in an unfair and deceptive practice.

Other issues that the Committee discussed included the authority to require precise directions (rather than, for example, 2 to 3 heaping teaspoons) and the issues of product variability and uniform enforcement.

2.3.2. Fresh Fruits and Vegetables.

(L&R, 1979, p. 176; 1980; 1982, p. 152; 2008)

**Guideline**

Recognizing the difficulty faced by consumers when more than one method of sale is employed in the same outlet for the same product, non-comparable methods of sale (e.g., weight and measure) for the same produce item in the same outlet should be minimized.

This guideline applies to all sales of fruits and vegetables. There are two tables, one for specific commodities and one for general commodity groups. Search the specific list first to find those commodities that either do not fit into any of the general groups or have unique methods of sale. If the item is not listed, find the general group in the second table. The item may be sold by any method of sale marked with an X.

(Amended 2008)

| **Method of Retail Sale for Fresh Fruits and Vegetables**  **Specific Commodity** | | | | | |
| --- | --- | --- | --- | --- | --- |
| **Commodity** | **Weight** | **Count** | **Head or Bunch** | **Dry Measure (any size)** | **Dry Measure (1 dry qt or larger)** |
| Artichokes | X | X |  |  |  |
| Asparagus | X |  | X |  |  |
| Avocados |  | X |  |  |  |
| Bananas | X | X |  |  |  |
| Beans (green, yellow, etc.) | X |  |  |  | X |
| Brussels Sprouts (loose) | X |  |  |  |  |
| Brussels Sprouts (on stalk) |  |  | X |  |  |
| Cherries | X |  |  | X | X |
| Coconuts | X | X |  |  |  |
| Corn on the Cob |  | X |  |  | X |
| Dates | X |  |  |  |  |
| Eggplant | X | X |  |  |  |
| Figs | X |  |  |  |  |
| Grapes | X |  |  |  |  |
| Melons (cut in pieces) | X |  |  |  |  |
| Mushrooms (small) | X |  |  | X | X |
| Mushrooms (portobello, large) | X | X |  |  |  |
| Okra | X |  |  |  |  |
| Peas | X |  |  |  | X |
| Peppers (bell and other varieties) | X | X |  |  | X |
| Pineapples | X | X |  |  |  |
| Rhubarb | X |  | X |  |  |
| Tomatoes (except cherry/grape) | X | X |  |  | X |

| **Method of Retail Sale for Fresh Fruits and Vegetables General Commodity Groups** | | | | | |
| --- | --- | --- | --- | --- | --- |
| **Commodity** | **Weight** | **Count** | **Head**  **or**  **Bunch** | **Dry**  **Measure**  **(any size)** | **Dry Measure (1 dry qt or larger)** |
| Berries and Cherry/Grape Tomatoes | X |  |  | X |  |
| Citrus Fruits (oranges, grapefruits, lemons, etc.) | X | X |  |  | X |
| Edible Bulbs (onions [spring or green], garlic, leeks, etc.) | X | X | X |  | X |
| Edible Tubers (Irish potatoes, sweet potatoes, ginger, horseradish, etc.) | X |  |  |  | X |
| Flower Vegetables (broccoli, cauliflower, brussel sprouts, etc.) | X |  | X |  |  |
| Gourd Vegetables (cucumbers, squash, melons, etc.) | X | X |  |  | X |
| Leaf Vegetables (lettuce, cabbage, celery, etc.) | X |  | X |  |  |
| Leaf Vegetables (parsley, herbs, loose greens) | X |  | X | X |  |
| Pitted Fruits (peaches, plums, prunes, etc.) | X | X |  |  | X |
| Pome Fruits (apples, pears, mangoes, etc.) | X | X |  |  | X |
| Root Vegetables (turnips, carrots, radishes, etc.) | X |  | X |  |  |

2.3.3. Cardboard Cartons.

(L&R, 1974, p. 223)

**Guidelines and Interpretations**

Cardboard cartons should be sold by their dimensions. Identification numbers used in the trade do not correspond to these dimensions and could tend to mislead the uninformed purchaser (although there is no actual unit such as inches associated with the identification numbers). Sales or catalogue literature will have to be investigated to determine whether there is sufficient information upon which to make a purchasing decision.

**Background**

Copies of letters received by the New York Bureau of Weights and Measures regarding cardboard containers were forwarded to the Committee. These letters highlight the confusion that exists when these containers are sold to new businessmen by an identity number which is often mistaken for the size of the box. For example, a 30 x 4 identification number refers to a box whose actual size is 27 x 3 inches. It was suggested that a new section be added to the Method of Sale of Commodities Regulation so that these containers can be sold on a basis that will provide more accurate information.

An important argument in support of adding a new section is that small businessmen just getting started need as much assistance as can be provided in order to survive and grow.

An argument opposing this change is that a table, similar to Table 1. of Section 2.9. (Softwood Lumber) of the Uniform Method of Sale Regulation, could be printed showing the relationship between identity and size; this would not solve the problem.

It is the consensus of the Committee that these containers should be sold by actual size. The Committee does not believe, however, that every trade practice must be controlled through the Uniform Laws and Regulations. This is particularly true where the item does not directly concern the retail consumer. The Committee, therefore, recommends that the appropriate trade associations be contacted and asked to correct this practice on a voluntary basis.

2.3.4. Catalyst Beads.

(L&R, 1981, p. 100)

**Guideline and Interpretation**

The proper method of sale of catalyst beads used in automobile exhaust systems is by volume. It is appropriate for the quantity declaration to be supplemented by part number or other description of the specific converter for which the package of catalyst beads is intended.

**Background**

A communication from the General Motors Corporation AC Spark Plug Division was forwarded to the Committee which proposes discontinuing the labeling of their catalyst beads by weight. When the catalyst becomes contaminated by leaded gasoline or prolonged use, the catalytic converter in the exhaust system of recent GM cars and trucks (running on unleaded gasoline) must be emptied of its catalyst beads and be refilled by volume with replacement catalyst beads in order to meet emission standards. The beads are used by volume (to fill a catalytic converter), are hygroscopic, and vary in core material density. Therefore, packages of beads meeting a net weight label require an additional one-third pound (on the average) over the packages labeled by volume, cost about $7.50 more per package, and the additional weight of beads will be discarded in actual use.

2.3.5. Incense.

(L&R, 1978, p. 151)

**Interpretation**

Incense labeled by count is fully informative and sufficient.

**Background**

The State of Oregon raised the issue of proper quantity declarations for the sale of incense. The question is what, if any, information other than count, such as weight or volume or length, is necessary for an adequate description on packages of incense. The Committee is of the opinion that a statement of count as defined in Section 6.4.1(c) of the Uniform Packaging and Labeling Regulation is fully informative and is sufficient in this case.

2.3.6. Sea Shells.

(L&R, 1976, p. 223)

**Guideline**

Sea shells shall be sold by count and weight for packages of 50 sea shells or less and by volume and weight for packages containing more than 50 sea shells.

2.3.7. Tire Tread Rubber Products.

(L&R, 1976, p. 233)

**Guideline**

Tire tread rubber products shall be sold by net weight. The polyethylene film protective backing shall be part of the product and included in the net weight. The core is part of the tare and must be deducted from the gross weight to determine the net weight.

2.3.8. Wiper Blades.

(L&R, 1979, p. 182)

**Interpretation**

There is a trade custom of labeling automobile wiper blades by the length of the metal backing or vertebra, not the length of the blade. This is an acceptable method of sale and net contents declaration.

**Background**

The Committee received a request from a manufacturer of automobile wiper blades that had a problem with one state concerning the measurement of length as labeled on their packages. The state felt that the proper designation should be the length of the blade itself; the manufacturer said that traditionally the industry measured the length of the metal backing or vertebra.

The Committee, after some discussion, determined that since there was no intent to mislead customers, the traditional measurement of the metal backing or vertebra was acceptable.

2.3.9. Fireplace Logs.

(L&R, 1975, p. 174)

**Interpretation**

Time of burning is not an appropriate quantity declaration for fireplace logs. (Section 2.4.3. of the Uniform Method of Sale of Commodities requires single logs to be sold by weight, or if packaged and less than 4 ft3, weight plus count.)

**Background**

The enforceability of quantity declarations using time as the basis of measurement for commodities, including packaged commodities, must be considered carefully if equity in the marketplace is to be achieved. The Committee wants to stress to those who have submitted time declaration questions that the enforceability factor should not override consumer protection and uniformity considerations. Based on the above criteria, the Committee recommends that the Conference take the position that time is not an appropriate quantity declaration for fireplace logs.

**2.3.11. Packaged Foods or Cosmetics Sold from Vending Machines.**

(L&R, 1982, p. 152)

**Interpretation**

Packaged foods and cosmetics sold from vending machines must be labeled the same as similar items not sold in vending machines, including identity, responsibility, net contents, and ingredient declaration, except that Section 3.3. of the Uniform Regulation for the Method of Sale of Commodities permits identity and net contents to be posted on the machine in lieu of appearing on the package.

**Background**

As part of its review of the Uniform Regulation for the Method of Sale of Commodities, the FDA recommended adding a statement to Section 3.3. that packaged foods and cosmetics sold in vending machines must in general be labeled in accordance with requirements for similar articles not sold in vending machines (e.g., ingredient declaration requirements). The Committee recommends that this information be made a guideline rather than incorporated as part of the uniform regulation.

**2.3.12. Movie Films, Tapes, Cassettes.**

(L&R, 1975, p. 174)

**Guideline**

Movie film may be sold by linear measure. Magnetic tapes and cassettes may be sold by either linear measure or playing time.

**Background**

The enforceability of quantity declarations using time as the basis of measurement for commodities, including packaged commodities, must be carefully considered to achieve equity in the marketplace. The Committee wants to stress to those who have submitted time declaration questions that the enforceability factor should not override consumer protection and uniformity considerations. The committee further recommends that the states follow FTC guidelines in requiring lineal measure for the sale of movie films and permit either linear measure or playing time for magnetic tapes and cassettes.

2.3.13. Vegetable Oil.

(L&R, 1983, p. 208)

**Guideline and Interpretation**

Packaged liquid vegetable oil must be labeled by liquid volume, although net weight may also be declared.

**Background**

Packages of liquid vegetable oil are being sold for restaurant and other small food business use labeled by weight. It has been brought to the attention of the Committee that containers of product labeled “5 gal” look identical in dimensions to those labeled “35 lb” but the density of the vegetable oil is such that the 35 lb cans contain only about 4½ gal. The Institute of Shortening and Edible Oils indicated that companies selling liquid vegetable oils often compete with those selling solid shortening, and that a net weight comparison is useful for these purposes. Recipes for food products in large sizes sometimes provide ingredient quantities by weight or volume.

It is the opinion of the members of the Committee that packaged liquid vegetable oil must be labeled by liquid volume although a net weight may be declared in addition to the net volume statement.

When a single manufacturer of vegetable oil packages the same oil in the same size container with two such widely different net quantity statements, this practice could easily be considered (a) misleading to the customer, and (b) nonfunctional slack fill. Weights and measures enforcement action should be taken.

**2.3.15. Bulk Sales.**

(L&R Committee, 1986, p. 140)

When packaged or wrapped items (such as individually wrapped candies) are sold from bulk displays by weight, the price must be based on the net weight, not the weight including the individual piece wrappings. This will require (1) subtracting the weight of the bag into which the customer puts the pieces plus (2) subtracting the weight of the piece wrappings (the latter is a percentage of the gross weight – that is, the tare increases as the customer selects more of the commodity).

**Background**

Retail food stores are merchandising prepackaged commodities such as candies, pet food, snack bars, and bouillon cubes from bulk displays. Some retailers sell these products by gross weight. Section 1.2. of the Uniform Weights and Measures Law reads in part: “The term ‘weight’ as used in connection with any commodity means net weight. . .”

A workshop was held on June 20, 1986, at the U.S. Department of Commerce, Washington, D.C., to explore the issues and alternatives involved in the sale of prepackaged goods from the bulk food sales areas of supermarkets. Representatives of the packaging, supermarket, and small grocery industries, scale and point-of-sale (POS) systems manufacturers, the U.S. Food and Drug Administration, weights and measures agencies, and the National Institute of Standards and Technology attended. No final recommendations came from this meeting; however, the participants expressed an interest in meeting again after a written report of the June 20, 1986, meeting was made available and before the Interim Meetings of the NCWM in January 1987. The following issues were discussed:

1. Prepackaged commodities in bulk displays are being sold on a gross weight basis.

Federal regulations covering packaged goods and every state Weights and Measures Law require any sale by weight to be “net weight” (not including the weight of the wrapping materials). In some areas of the nation, many items are being sold on a gross weight basis in the supermarkets, for example, fresh fruit and vegetables in poly bags in the produce area. Perhaps because of the light weight of these bags (that is, the minimum size of the scale division on the ordinary supermarket checkout scale is large with respect to the weight of the poly bags), low priority is given to correcting this sales practice, and a lack of uniformity in enforcement of the net weight requirements results. Weights and measures officials have found tare amounting to over 40 % of the gross weight in prepackaged items sold from bulk; the majority of cases seems to range from 3 % to 12 %. Officials see the need to “draw the line” in a sales practice that appears to have evolved from other practices that were not heavily monitored and corrected at their inception.

2. Retailers face technical and administrative problems in properly deducting tare from the gross weight.

Automatic deduction of tare is preferable for large-scale retailers because of its speed. No equipment (either stand-alone scale or POS) is available at the present time that can: (1) subtract a percentage of the gross weight to represent the tare weight; or (2) subtract a fixed tare for the bag and a percentage tare for the wrapper on the prepackaged item. [Editor’s Note: There is equipment now available that can deduct a tare that is a percentage of the gross weight.] Two POS system manufacturers said that new systems with percentage tare capability could be designed, but they could not definitely say whether retrofitting existing systems was possible. They said that the ability to retrofit declined with the age of the system. Supermarket representatives expressed concern that their in-store computer software would need modification above and beyond the retrofitting or software redesign that might be done by the POS manufacturers; their software is designed around current POS software.

Deduction of tare in the bulk food area using a scale other than the checkout scale can be done more easily than at checkout if a POS system is being used. A tare look-up table used in conjunction with the scale appears to be the only currently used method that meets the net weight requirements when packaged products are sold from bulk. (The procedure is to gross weigh the product, look up the tare, subtract it from the gross weight, and then determine a final net weight and total price.)

Each retailer will have to consider the cost of additional manpower (as the weighing and marking of the purchase in the bulk food area might require), new equipment (purchasing scales or POS systems with percentage tare capability), or retrofit of existing equipment as compared with the value of the market share contributed by the bulk marketing of prepacked commodities. However, two supermarket chain representatives said that they expected some growth in this type of sale (because of the customers’ perception of cleanliness of the product, for example).

3. Present methods of sale and advertising are often misleading.

Suggestions were made that advertising on a “wrapped weight” basis would properly inform the consumer. However, it was pointed out that a typical purchaser does not know what “wrapped weight” is (i.e., gross weight). Moreover, selling packaged goods on a gross weight basis is illegal; it thwarts value comparison with other products sold by net weight.

Bulk food sales advertising often includes claims of savings of, for example, 10 % to 20 % over a purchase of the same commodity in standard-pack form. These advertising claims can be exaggerated and misleading if the comparisons referenced are between standard-pack commodities sold net weight and products sold from bulk on a gross weight basis.

The possibility of advertising a net weight unit price, but actually weighing at the checkout on a gross weight basis (and charging at a lower gross weight unit price) was discussed. For example, a sign could be posted with the following:

“$1.50 per pound, net weight. We are not able to weigh this packaged product on a net weight basis (that is, without the wrapper), and will therefore charge you $1.40 per pound including the wrapper weight at the checkout.”

Everyone agreed that advertising claims and appropriate wording would have to be chosen carefully if this is to be viable. However, those weights and measures officials present were generally opposed to this alternative based on the difficulty of enforcement and lack of assurance that a consumer would really understand explanatory signage.

2.5.6. Guidelines for NCWM Resolution of Requests for Recognition of Moisture Loss in Other Packaged Products.

(Exec, 1988, p. 94)

The Task Force on Commodity Requirements limited its work to only a few product categories, using these categories as models for addressing moisture loss. The gray-area concept is the result of this work.

Recognizing several candidates for future work in moisture loss, the Task Force recommends that the following guidelines for moisture loss be followed as far as possible by any industry requesting consideration:

1. There should be reasonable uniformity in the moisture content of the product category. For example, since pet food has final moisture contents ranging from very moist to very dry, some sub categorization of pet food needs to be defined by industry before the NCWM study of the issue.

2. The predominant type of moisture loss (whether into the atmosphere or into the packaging materials) must be specified.

3. Different types of packaging might make it necessary to subcategorize the product. For example, pasta is packaged in cardboard, in polyethylene, or other packaging more impervious to moisture loss. The industry should define the domain of packaging materials to be considered.

4. “Real-world” data is needed on the product as found in the retail marketing chain – not just laboratory moisture-loss data.

5. The industry requesting consideration of moisture loss for its product should collect data on an industry-wide basis (rather than from only one or two companies).

Information concerning the relative fractions of imported and domestically produced product should be available, for example, in order to assess the feasibility of interacting with the manufacturer on specific problem lots.

6. Moisture loss may occur either:

- during manufacturing; or

- during distribution.

Data will be needed to show the relative proportion of moisture loss in these different locations since moisture loss is permitted only under good distribution practices. Geographical and seasonal variations may apply.

7. A description of the processing and packaging methods in use in the industry will be of great value, as will a description of the distribution system and time for manufacturing and distribution. A description of the existing net quantity control programs in place should be given, together with information on how compliance with Handbook 133 is obtained. A description of maintenance and inspection procedures for the scales should be provided, together with information on suitability of equipment and other measurements under Handbook 44.

8. A description of federal and local agency jurisdiction and test should be given, as well as any regulatory history with respect to moisture loss and short weight. Has weights and measures enforcement generated the request? What efforts have addressed the moisture loss issue prior to approaching the NCWM? Are the appropriate federal agencies aware of the industry’s request to the NCWM?

9. The industry should propose the type of compliance system and/or moisture determination methodology to be used. The compliance scheme, if it contains industry data components, should be susceptible to verification (examples: USDA net weight tests for meat; exchange of samples with millers for flour) and should state what the companies will do to provide data to field inspection agencies in an ongoing fashion (as the gray-area approach requires). If in-plant testing is to be combined with field testing, who is to do such testing, and how is this to be accomplished? It should be possible to incorporate the proposed testing scheme into Handbook 133 to be used with Category A or B sampling plans.

When all the preliminary information recommended above has been collected, a field test of the proposed compliance scheme should be conducted by weights and measures enforcement officials to prove its viability.

See the plan diagrammed on the next page.



2.6.1. Retail Gas Sales and Metric Price Computations in General.

(S&T, 1980, p. 227)

**Guideline**

The National Institute of Standards and Technology published equivalent rounded values for metric equivalents of U.S. customary units should be used. They are:

3.785 411 784 liters = 1 gallon

0.264 172 052 4 gallon = 1 liter

A “Rule of Reason” should apply to the corrected value so that the value used is consistent with the quantity of the transaction. The converted value should never have fewer than four significant digits and should have at least the same number of significant digits as the number of significant digits in the quantity of product being converted. For example, if a 1000 gal delivery were to be converted to liters the value would be 3785 L; for 10 000 gal, 37 854 L; for 100 gal, 378.5 L.

In the case of expressing a unit price equivalent for consumer value comparisons in retail gasoline sales, the following formula should be used: (advertised, posted, or computing device unit price per liter) × 3.785 = (equivalent unit price per gallon, rounded to the nearest 1/10 cent.)

**Examples:**

26.9 cents per liter x 3.785 = $1.018 per gallon

26.8 cents per liter x 3.785 = $1.014 per gallon

26.7 cents per liter x 3.785 = $1.011 per gallon

26.5 cents per liter x 3.785 = $1.003 per gallon

26.4 cents per liter x 3.785 = $0.999 per gallon

This method is preferable to the alternative method of dividing the price per gallon by 3.785, which results in the same price per liter for three or more different prices per gallon when rounded to the 1/10 cent.

**2.6.2. Price Posting.**

(L&R, 1981, p. 101)

**Guideline**

1. Street Signs.

a. Until such time as the sale of gasoline and other Engine fuels is predominately by metric measurement (liter), price per gallon information should be made readily available to all prospective customers.

b. All street, roadside, and similar advertising signs displaying product price should provide price per gallon information.

c. Signs showing the equivalent price per liter may also be used, but their use is optional and should not employ numerals larger than the equivalent gallon price display.

d. Signs should show complete dollar and cents numerals, and they should be clearly legible and of full size. An exception should be granted to street signs that were designed to display only three numerals (e.g., $.899) and not four numerals as required for prices over $1.00 per gallon (e.g., $1.259). Until such signs can be replaced or modified, it would be acceptable:

(1) to attach an appropriate sign extension with the decimal fraction of a cent representation in alignment with the posted price;

(2) to include a smaller fraction of a cent representation with the last numeral of the posted price; or

(3) to add the whole number “one” before the cents values.

e. The changeover to advertising prices by the liter as a single mode of pricing should be established when 75 % of all retail outlets in a jurisdiction have converted their dispensers to metric measurement.

2. Posting of Prices at the Dispenser.

Each retail outlet should use exclusively only one measurement method of sale (gallon or liter). A change from one method to another should be carried out for all devices dispensing motor fuels in the retail outlet.

*In the case of liter sales, suitable posting of per gallon and per liter prices at the device, service island, premises of the retail outlet, or any other locations must be in accordance with state and local laws, regulations, and ordinances, and in a manner that facilitates consumer comparisons between the per gallon price and the per liter price. Additional requirements may be necessary to avoid uncertainty as to nomenclature, location, and size of information on signs.*

It is recommended that:

a. Current and accurate price comparisons between gallon and liter values be posted at the dispenser within easy view of the customer and visible from either side of the island.

b. The sign should show equivalent quantity and price information.

**Examples:**

27.1¢ per liter = $1.026 per gallon

3.785 liters = 1 gallon

c. Letters and numerals should be at least ¾ in (19 mm) in height and ⅛ in (3 mm) in width of stroke.

3. Quantity and Price Display on Dispensers

It is required that dispensers be designed to clearly show all required quantity and price information on the face(s) of a motor fuel dispenser in accordance with Handbook 44.

4. Dispenser Modification Kits

As an interim alternative to “half pricing,” a number of computer modification kits have been installed to modify existing retail motor fuel dispensers that were not designed to compute and indicate prices over 99.9¢ per gallon.

*Some of the modification kits that have been referred to state weights and measures officials for approval have been rejected as failing to conform to Handbook 44 requirements. It is recommended that all modification kits and future modifications of dispensers be so designed and made as to be in full compliance with all applicable requirements of Handbook 44.*

**2.6.3. Octane Posting Regulations.**

(Liaison, 1979, p. 240)

**Guideline**

Weights and Measures officials should report to the FTC any instances of failure to post octane ratings by service stations. These would most likely occur during routine inspections of service station gasoline dispensers. Reports should be made to the appropriate FTC regional offices as listed below.

**Background**

As of June 1, 1979, the FTC requires the determination of octane ratings by refiners, the certification of octane ratings by refiners and distributors, and the posting of octane ratings by retailers on all gasoline pumps. The requirements are set forth in Public Law 95 297, the Petroleum Marketing Practices Act (PMPA), passed in June 1978 and the FTC’s Octane Rule, 16.C.F.R. Part 306. Although the octane posting rule has no effect on most FTC programs administered by state weights and measures officials with respect to checking gasoline dispensing devices for accuracy, the Liaison Committee feels that the Conference should be generally informed about the law and the FTC rule, if only to be prepared to answer inquiries about it or for some possible future enforcement demands. Keeping apprised of developments associated with the rule may be advisable. In addition, it will affect states which have octane certification and posting programs.

**Regional Offices, Addresses, and Telephone Numbers:**

|  |  |  |
| --- | --- | --- |
| **Northeast Region**  (CT, ME, MA, NH, NJ, NY, PR, RI, VT, and U.S. Virgin Islands)  Federal Trade Commission  One Bowling Green  New York, NY 10004  (877) 382-4357 | **East Central Region**  (DE, DC, MD, MI, OH, PA, VA, and WV)  Federal Trade Commission  1111 Superior Avenue  Suite 200  Cleveland, OH 44114-2507  (877) 382-4357 | **Southeast Region**  (AL, FL, GA, MS, NC, SC, and TN)  Federal Trade Commission  Suite 1500  225 Peachtree Street, NE  Atlanta, GA 30303  (877) 382-4357 |
| **Midwest Region**  (IL, IN, IA, KS, KY, NE, ND, MN, MO, SD, and WI)  Federal Trade Commission  55 West Monroe Street  Suite 1825  Chicago, IL 60603  (877) 382-4357 | **Northwest Region**  (AK, ID, MT, OR, WA, WY)  Federal Trade Commission  915 Second Avenue, Room 2896  Seattle, WA 98174  (877) 382-4357 | **Southwest Region**  (AR, LA, NM, OK, and TX)  Federal Trade Commission  1999 Bryan Street  Suite 2150  Dallas, TX 75201-6808  (877) 382-4357 |
| **Western Region**  (AZ, Northern CA, Southern CA, CO, HI, NV, and UT)  Federal Trade Commission  901 Market Street  Suite 570  San Francisco, CA 94103  (877) 382-4357 | **Western Region**  (AZ, Northern CA, Southern CA, CO, HI, NV, and UT)  Federal Trade Commission  10877 Wilshire Boulevard  Suite 700  Los Angeles, CA 90024  (877) 382-4357 |  |

The preemption section of PMPA (204) reads as follows:

Section 204. To the extent that any provision of this title applies to any act or omission, no state or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this title.

Section 204 prohibits states and other political subdivisions from enforcing requirements that are not the same as the applicable provisions of this law. Jurisdictions having octane requirements should carefully review with their legal advisors the effect of this law.

The FTC’s Octane rule was published in final form on March 30, 1979, in the Federal Register (Vol. 44, No. 63, Part V, pp. 19160 19172). The rule became effective June 1, 1979.

The law requires that refiners determine octane ratings of their products, and certify them to their distributors. The distributors must pass along the certification to the retailer, unless he blends the gas, in which case he may have to certify his blend.

A similar procedure relating to the posting of octane ratings is set forth for the retailer. The FTC is responsible for enforcement with respect to the accuracy of the certified ratings. The FTC is also empowered to check records, which must be retained for one year by each link in the distribution chain.

The FTC is in need of help from the state and local jurisdictions in the area of surveillance and testing. Such assistance could occur at a number of levels. Notice of octane mislabeling and failure to post octane ratings is requested.

Other levels of assistance would concern jurisdictions that have octane testing programs and would be interested in cooperating with FTC in testing or in reporting discrepancies in octane rating.

For more information contact the Federal Trade Commission at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, phone (202) 326-2222.

2.6.4. Multi-Tier Pricing: Motor Fuel Deliveries (Computing Pumps or Dispensers).

(L&R, 1982, p. 150; L&R, 1985, p. 100) (L&R, 1988, p. 162)

**Policy**

Charging different prices for the same product depending upon the manner of payment, other purchases, amount of service, etc., is a management decision of the merchandiser. Those merchants who elect to offer multiple prices for motor fuel must comply with the state and local weights and measure laws and regulations, including Handbook 44. They must also make marketing decisions that comply with state truth in lending, cash discount, price advertising, and usury laws. All such laws are intended to prohibit deceptive, misleading, or misrepresentative information being given to the consumer. The following guidelines are intended to apply to price advertising or posting at the street side or highway as well as at the pump or dispenser, and to the price computed at the device. These guidelines are applicable to other discount or combination offers (such as combination purchases of car wash and gas, for example).

1. If a price is posted or advertised, it must be available to all qualified customers. If any condition or qualification is required to obtain the posted price, that condition must also be posted clearly and understandably, in conjunction with the price wherever it is posted.

2. The lowest price may be posted or advertised by itself as long as any restrictions for receiving that price (for example, “cash only”) are also clearly posted or advertised in conjunction with the price and as long as other state requirements do not prohibit it. For example, certain states require that all prices available from a given retail location must be posted on street side signs if any prices are posted.

3. If the merchandiser elects to establish separate devices or islands for sale of the same product at different prices, the devices or islands shall be clearly identified as “cash,” “credit,” “self-serve,” or other appropriate wording to avoid customer confusion.

4. The use of a single-price-computing dispenser for sale of motor fuel at multiple unit prices is inappropriate, facilitates fraud, and should be eliminated. The NCWM should adopt a plan and timetable for changeover to devices that can compute and display final money values for multiple prices.

**2.6.5. Cereal Grains and Oil Seeds.**

(L&R, 1981, p. 95; L&R, 1996, p. 135)

**Interpretation**

The addition of water to grain for the purpose of adding weight prior to selling grain by weight is an illegal practice under federal laws.

***NOTE***:  *Effective February 11, 1995, the Federal Grain Inspection Service adopted a regulation in 7 CFR Part 800.61 prohibiting the application of water to grain except for milling, malting, or similar processing operations. See Volume 59, No. 198 for Friday, October 14, 1994, or page 52 071, for additional information.*

**Background**

A letter from the Oklahoma Grain and Feed Association was forwarded to the Committee asking whether the addition of water to grain is legal. The request was prompted by an article reporting on methods of adding water to grain to bring the moisture content up to market standards. For example, when soybeans are sold at 8 % moisture content, there is less weight sold (and less revenue for the soybeans to the seller) than if water were added to the same soybeans to bring them to 10 % moisture content.

However, the Committee is greatly concerned about the ramifications of such practices. Many grain experts do not believe that over-dried grain should be valued as highly as grain at moisture contents close to market standards. Overly dry grain is more susceptible to breakage, for example.

Water added after harvest will not be taken up chemically the way that naturally moist grain binds water. Errors in adding water or the particular biochemical nature of the grain after addition of water can lead to spoiled grain. Studies on the long term keeping qualities of grain with water added have not been carried out. The calibration of moisture meters is based on naturally moist grain, and there is a known difference between the electrical properties of naturally moist grain and grain with moisture added.

Of a more basic nature, however, the Committee recognizes the fact that a grain buyer purchases grain expecting such grain to be naturally moist or dried, not to be with water added. The seller who adds water to grain solely to add weight, therefore, misrepresents his product.

Both the FDA and USDA have sent letters to the Committee indicating that the addition of water to grain solely for the purpose of adding weight is an illegal practice. Because existing federal laws already prohibit this practice, the Committee recommends no further action on the part of the Conference at this time.

**2.6.6. Basic Engine Fuels, Petroleum Products, and Lubricants Laboratory.**

(L&R, 1994, p. 129-135; L&R, 2006, p. L&R-8) (Developed by the Petroleum Subcommittee.)

The petroleum fuels and lubricants laboratory is an integral element of an inspection program and is generally developed to satisfy the testing requirements as described in the laws and rules of the regulating agency. Guidelines have been developed to assist states in evaluating their options of employing a private lab or building or expanding their own lab. This information is available at **www.nist.gov/pml/wmd/index.cfm**.

2.6.7. Product Conformance Statements.

(L&R, 1992, p. 148)

**Interpretation**

References to a product’s conformance with product standards (for example, “manufactured to standard EN235” or similar product conformance statements) on labels for wallcovering or other products, are not considered qualifying terms and do not violate Section 6.12.1., Supplementary Quantity Declarations of the Uniform Packaging and Labeling Regulation, provided the requirements of Section 8.1.4. Free Area is met.

**Background**

The Wallcovering Manufacturers Association (WMA) requested the Conference’s position on the use of conformance statements on the labels of wallcovering and border material. This issue relates to wallcovering products that originate from manufacturers in Europe where a declaration of conformance to a specific government standard is required on consumer packages. Thousands of product “standards” or “Euronorms” are being established for the European Community. Conformance declarations are required to provide consumers and customs officials with information on the product. The issue relates to the use of such statements as “manufactured to standard EN235” on labels of wallcovering that are imported from Europe. The WMA requested the Committee’s opinion on the use of this type of statement if a package is labeled in conformance with sections Section 6.12.1. Supplementary Quantity Declarations and Section 8.1.4. Free Area. One question is whether the display of the conformance statement would be permitted provided that it did not include an unacceptable quantity declaration. Another question concerns the need to comply with the requirement for adequate free area around the quantity declaration when the conformance declaration is placed on the label. It was the Committee’s opinion that conformance statements on package labels would not violate any provisions of the PLR if the requirements of Sections 6.12.1. and 8.1.4. are met.

The Committee recommended this interpretation for inclusion in Handbook 130 because it is likely that this type of notice will become common as more and more free market trading areas are opened to expand international trade. This interpretation does not indicate acceptance or endorsement of any requirements contained in product conformance statements.

**2.6.8. Commodities Under FTC Jurisdiction under the Fair Packaging and Labeling Act and Exclusions.**

(L&R, 1993, p. 279; L&R, 1994, p. 294)

The following lists indicate the commodities and commodity groups that are and are not within the scope of the Fair Packaging and Labeling Act administered by the FTC. The following codes appear with each excluded commodity and designate the reason that the particular commodity has been excluded.

BATF – designates commodities subject to laws administered by the Bureau of Alcohol, Tobacco, and Firearms.

CI (Commission Interpretation) – designates those categories that have been excluded by the Commission in the light of legislative history of the definition of “consumer commodity.” By applying this definition to individual commodities, the Commission has more narrowly applied the latter term and set forth a list of items that do not meet the criteria of consumer commodities. On occasion the Commission is requested in both a formal and informal manner to consider individual products and to determine their status relative to the definition of “consumer commodity” as it is used in the Act.

EPA – designates commodities subject to the Federal Environmental Pest Control Act of 1972 administered by the Environmental Protection Agency.

FDA – designates those commodities which are subject to regulation by the FDA either under the portion of the FPLA administered by that agency or the Federal Food, Drug, and Cosmetic Act (Section 10(a)(3) and Section 7 of the FPLA). Following the code FDA will be a letter further designating the commodity as either a food (F), drug (D), cosmetic (C), or device (DV).

USDA – designates those commodities excluded from jurisdiction by Section 10(a) of the FPLA and represents a commodity within one of the following categories: meat or meat products, poultry or poultry products, or tobacco or tobacco products.

It may be of some help in ascertaining whether a particular product is or is not included within the FPLA definition of “consumer commodity” and thus subject to FTC jurisdiction under that Act, to refer to the following definition:

“. . . Any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which is usually consumed or expended in the course of such use.”

By applying these criteria to the particular product in question and then reviewing the list of excluded commodities, the observer will be able, in most instances, to determine the status of the item. In the event, however, that the observer is unable to ascertain whether a particular commodity is covered or excluded from FTC jurisdiction, contact FTC for an opinion.

| **Commodities Included Under FTC Jurisdiction** | |
| --- | --- |
| Soaps and Detergents | Powder, flakes, chips, etc. |
|  | Liquid |
|  | Paste, cake, or tablet |
| Cleaning Compounds | Liquid |
|  | Powder |
|  | Paste or cake |
|  | Solvent and cleaning fluids for home use |
| Laundry Supplies | Conditioners and softeners, ironing aids, distilled water |
|  | Sizings and starches |
|  | Bluings and bleaches |
|  | Pre-soaks, enzymes, etc. |
| Cleaning Devices | Sponges and chamois |
|  | Steel wool, scouring and soap pads |
| Food Wraps | Plastic and cellophane |
|  | Wax paper and paper |
|  | Foil (aluminum wrap) |
| Paper Products | Toweling |
|  | Napkins, table cloths, and place mats |
|  | Facial tissues |
|  | Bathroom tissues |
|  | Disposable diapers |
|  | Crepe paper |
|  | Other (e.g., shelf paper, wrapping paper, eye glass tissues) |
| Waxes and Polishes | Powder |
|  | Liquid |
|  | Paste and cake |
|  | Other (e.g., polish impregnated cloths, scratch removers) |
| Household Supplies | Matches |
|  | Candles |
|  | Toothpicks |
|  | Cordage (string, twine, rope, clothes line, etc.) |
|  | Drinking straws |
|  | Lighter and propane torch fuel, flints, pipe cleaners, etc. |
|  | Lubricants |
| Household Supplies (continued) | Picnic supplies |
|  | Sand paper and emory paper |
|  | Charcoal briquets, chips, logs, etc. |
|  | Dyes and tints |
|  | Camera film, photo supplies and chemicals |
|  | Protective foil cooking utensils |
|  | Aluminum foil cooking utensils |
|  | Christmas decorations |
|  | Solder |
|  | LPG for other than home heating or cooking |
|  | Waxes for home use |
|  | Light bulbs |
|  | Dry cell batteries |
|  | Pressure sensitive tapes, excluding gift tapes |
| Containers | Paper (plain, waxed, or plastic coated) |
|  | Foil |
|  | Plastic or Styrofoam |
| Air Fresheners and Deodorizers | Potpourri |
| Adhesives and Sealants |  |
| Cordage |  |

| **Commodities Excluded from FTC Jurisdiction** | | |
| --- | --- | --- |
| **Term** | **Description** | **FTC Jurisdiction** |
| Adhesive Tape |  | FDA-D |
| Alcoholic Beverages |  | BATF |
| Aluminum Clothesline | Plastic clothesline with a steel core | CI |
| Antifreeze |  | CI |
| Artificial Flowers and Parts |  | CI |
| Automotive Accessories | Floor mats, seat covers, spare parts, etc. | CI |
| Automotive Chemical Products | Auto polish, wax, and finish conditioner, rubbing compound, tire paint, chrome polish, gasoline additives, etc. | CI |
| Bath Oil and Bubble Bath |  | FDA-C |
| Bicycle Tires and Tubes |  | CI |
| Books |  | CI |
| Bottled Gas | Cooking or heating | CI |
| Brushes | Bristle, nylon, etc., including hair-brushes, toothbrushes, hand and nail brushes, paint brushes, etc. | CI |
| Brooms and Mops | Glass, floor, and dish mops, etc. | CI |
| “Bug Proof” Shelf Paper |  | EPA |
| Candle Holders | Without candles | CI |
| Cameras |  | CI |
| Chinaware |  | CI |
| Christmas Light Sets | Replacement or other bulbs sold separately are not excluded | CI |
| Cigarette Lighters |  | CI |
| Clothespins |  | CI |
| Clothing and Wearing Apparel | Socks, gloves, shoelaces, underwear, etc. | CI |
| Compacts and Mirrors |  | CI |
| Cosmetics | Defined by Section 201(i) of the Food, Drug, and Cosmetic Act as “(l) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap.” | FDA-C |
| Cotton Puffs | Sterilized | FDA-D |
| Crystalware |  | CI |
| Detergent Bar with Any Drug or Cosmetic Claim | If the observer experiences difficulty in ascertaining whether or not a given product is a soap or a detergent, contact the manufacturer or FDA. | FDA-D or C |
| Decorative Magnets |  | CI |
| Devices | Defined by Section 201(h) of the Food, Drug, and Cosmetic Act as “instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.” This category includes trusses, syringes, arch supports, etc. | FDA-DV |
| Diaries and Calendars |  | CI |
| Disinfectants |  | EPA |
| Drugs | Defined by Section 201(g) (1) of the Food, Drug, and Cosmetic Act as “(a) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia, or official National Formulary, or any supplement to any of them; and (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (c) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (d) articles intended for use as a component of any articles specified in clause (a), (b) or (c); but does not include devices or their components, parts, or accessories.” | FDA-D |
| Durable Articles or Commodities |  | CI |
| EPA Covered Products | Products subject to regulation under the Federal Environmental Pesticide Control Act that is administered by the Environmental Protection Agency. | EPA |
| Fingernail Files |  | CI |
| Flowers, Flower Seeds, Fertilizer, and Fertilizer Materials, Plants or Shrubs, Garden and Lawn Supplies |  | CI |
| Food | Defined by Section 201(f) of the Food, Drug, and Cosmetic Act as “(1) articles used for food and drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.” | FDA-F |
| Fountain Pens, Mechanical Pencils, and Kindred Products | Ball point pens, lead pencils, and lead refills, etc. | CI |
| Garden Tools | Hoses, trowels, grass clippers, etc. | CI |
| Germ Killing or Germ Proofing Products |  | EPA |
| Gift Tape and Ties | Ribbon, tape, etc. | CI |
| Gift Wrapping Material | Decorative wrapping foil, paper, cellophane, etc. | CI |
| Glasses and Glassware | Disposable plastic glasses are not excluded | CI |
| Gloves (of Any Type) |  | CI |
| Greeting Cards |  | CI |
| Hair Combs, Nets, and Pins |  | FDA-DV |
| Hand Tools |  | CI |
| Handicraft and Sewing Thread | Yarn, etc. | CI |
| Hardware | Extension cords, thumb-tacks, hose clamps, nails, screws, picture hangers, etc. | CI |
| Household Appliances, Equipment, or Furnishings, Including Feather and Down-Filled Products, Synthetic-Filled Bed Pillows, Mattress Pads and Patchwork Quilts, Comforters, and Decorative Curtains |  | CI |
| Ink |  | CI |
| Insecticides | Insect repellents in any form, mothballs, etc. | EPA |
| Ironing Board Covers |  | CI |
| Jewelry |  | CI |
| Lambs Wool Dusters |  | CI |
| Luggage |  | CI |
| Magnetic Recording Tape | Reels, cassettes, and cartridges. | CI |
| Meat and Meat Products |  | USDA |
| Metal Pails |  | CI |
| Motor Oil | Including additives. Household multi-purpose oil is not excluded. | CI |
| Mouse and Rat Traps |  | CI |
| Mouthwash |  | FDA-D |
| Musical Instruments |  | CI |
| Paints and Kindred Products | Wallpaper, turpentine, putty, paint removers, caulking and glazing compounds, wood fillers, etc. Note, however, that bathroom caulking materials, patching plaster, spackling compound, and plastic wood are not excluded. In the event of uncertainty, contact FTC. | CI |
| Paintings and Wall Plaques |  | CI |
| Pet Care Supplies |  | CI |
| Pewterware |  | CI |
| Photo Albums |  | CI |
| Pictures |  | CI |
| Plastic Buckets and Garbage Cans |  | CI |
| Plastic Tablecloths, Plastic Place Mats |  | CI |
| Plastic Shelf Lining |  | CI |
| Pre-Moistened Towelettes |  | FDA-C |
| Polishing Cloths | Polishing cloths that are impregnated with polish or chemicals (silicone, etc.) are not excluded. | CI |
| Poultry and Poultry Products |  | USDA |
| Rubber Gloves |  | CI |
| Rubbing Alcohol |  | FDA-D |
| Safety Flares |  | CI |
| Safety Pins |  | CI |
| Sanitary Napkins |  | FDA-D or C |
| School Supplies | Rulers, crayons, paper, pencils, etc. | CI |
| Self-Stick Protective Felt Tabs |  | CI |
| Seeds of All Kinds |  | USDA |
| Sewing Accessories | Needles of any type, thimbles, kindred articles, etc. | CI |
| Shampoo |  | FDA-C  or D |
| Shoelaces |  | CI |
| Small Arms Ammunition |  | CI |
| Silverware, Stainless Steelware, and Pewterware |  | CI |
| Smoking Pipes |  | CI |
| Soap Bars with a Drug Claim | Including any claim for removing facial blemishes, etc. Refer to Detergent Bars for further discussion in this area. | FDA-D |
| Soap Dishes |  | CI |
| Souvenirs |  | CI |
| Sporting Goods |  | CI |
| Stationery and Writing Supplies | Looseleaf binders, paper tablets, etc. | CI |
| Textiles and Items of Wearing Apparel | Cloth laundry bags, towels, cheese cloth, shoe shine cloths, etc. | CI |
| Tobacco and Tobacco Products | Pipes, cigarettes, etc. | BATF - USDA |
| Toothpaste |  | FDA-D |
| Toys |  | CI |
| Typewriter Ribbon |  | CI |
| Wire of Any Type |  | CI |
| Woodenware |  | CI |

**2.6.9. Size Descriptors for Raw, Shell-On Shrimp Products.**

(L&R, 1995, p. 97)

**Guideline**

If size descriptor terms for shrimp (e.g., small, medium, large, or colossal) are used on packages, advertisements, or on signs when offering shrimp for sale from bulk, a statement of count-per-kilogram, if sold by kilogram, or count-per-pound, if sold by pound, should be included adjacent to the size descriptor (e.g., medium-large, 31 to 40 shrimp per pound).

2.6.10. Model Guidelines for the Administrative Review Process.

**Purpose**

These guidelines are provided to assist weights and measures programs in establishing an administrative review process. They are not intended to be the only process an agency may use nor are they intended to supersede any agency’s existing process. Before implementing ANY process, it should be approved by legal counsel.

These guidelines ensure that persons affected by “inspection findings” (e.g., price misrepresentations or shortweight packages), or who are deprived of the use of their property (devices or packages placed under “stop” or “off-sale” order), are provided a timely-independent review of the action. The process enables affected persons to provide evidence which could be relevant in determining whether the enforcement action was proper. The purpose of the process is to ensure that a person’s ability to conduct business is not hindered by improper enforcement actions. This process is independent of any other action (e.g., administrative penalties, prosecutions, etc.) that may be taken by the enforcement agency.

**Background**

In the course of their work, weights and measures officials take enforcement actions that may prohibit the use of devices or the sale of packaged goods (e.g., “stop-sale” or “off-sale” orders for packages and “stop-use” or “condemnation” tags issued on devices). Improper actions (e.g., not following prescribed test procedures, enforcing labeling requirements on exempted packages, or incorrectly citing someone for a “violation”) place the official and the jurisdiction in the position of being liable for the action if it is found that the action was “illegal.” In some cases, weights and measures jurisdictions could be ordered to pay monetary damages to compensate the affected party for the improper action.

This process is one way to provide affected persons an opportunity to present evidence which may be relevant in determining whether the order or finding has been properly made to an independent party. The procedure enables business operators to obtain an independent review of orders or findings so that actions affecting their business can be evaluated administratively instead of through litigation. This ensures timely review, which is essential because of the impact that such actions may have on the ability of a business to operate and in cases where perishable products may be lost.

**Review Provisions**

Parties affected by enforcement actions must be given the opportunity to appeal enforcement actions.

Inspectors are the primary contacts with regulated firms and thus are in the best position to ensure that the enforcement actions they take are “proper.” “Proper” means that inspections are conducted (1) within the scope of the authority granted by law, (2) according to recognized investigative or testing procedures and standards, and (3) that enforcement actions are lawful. The “burden” for proving that actions are “proper” falls on the weights and measures program, not on regulated firms.

Weights and measures officials are law enforcement officers. Therefore, they have the responsibility to exercise their authority within the “due process” provisions of the U.S. Constitution. As weights and measure programs carry-out their enforcement responsibilities in the future, more and more challenges to their actions and authority will occur. It is in the best interest of any program to establish strict operational procedures and standards of conduct to prevent the occurrence of improper actions which may place the jurisdiction in an untenable position in a court challenge of an enforcement action. The foundation for ensuring “proper” actions is training, clear and concise requirements, and adoption of, and adherence to uniform test procedures and legal procedures.

Prior to taking enforcement actions the inspector should recheck test results and determine that the information on which the action will be taken is accurate.

Inspections shall be conducted with the understanding that the findings will be clearly and plainly documented and reviewed with the store’s representative.

During the review of the findings, the firm’s representative may provide information which must be used by the inspector to resolve the problems and concerns before enforcement actions are taken. In some cases, the provided information may not persuade the inspector to forego the action. In some cases, the inspector and business representative may not understand the circumstances surrounding the violations, or there may be a conflict between the parties that they cannot resolve. In other cases, the owner or manufacturer may not learn that an enforcement action has occurred until long after the inspector leaves the establishment.

Steps:

1. Provide a framework that will help in resolving most of these situations where “due process” is of concern. Make sure that the responsible party (e.g., as declared on the package label) is notified of violations and receives copies of inspection reports. Establish standard operating procedures to assure the affected party of timely access to a representative of the weights and measures program so that the firm can provide the relevant information or obtain clarification of legal requirements.

2. Make the process as simple and convenient as possible. Especially in distant or rural areas where there are no local offices, the review should be conducted by a supervisor of the official taking the action if agreed to by the person filing the request for review.

3. The process should include notice that the firm can seek review at a higher level in the weights and measures program or an independent review by a third party. The following procedures are recommended:

(a) Any owner, distributor, packager, or retailer of a device ordered out of service, or item or commodity ordered “off-sale,” or inspection finding (e.g., a price misrepresentation or a shortweight lot of packages) shall be entitled to a timely review of such order, to a prompt, impartial, administrative review of such off-sale order or finding.

A notice of the right to administrative review should be included on all orders or reports of findings or violations and should be communicated to the responsible firm (e.g., person or firm identified on the product label):



(b) The administrative review shall be conducted by an independent party designated by the Director or before an independent hearing officer appointed by the Department. The officer shall not be a person responsible for weights and measures administration or enforcement.

(c) No fees should be imposed for the administrative review process.

(d) The firm responsible for the product or the retailer may introduce any record or other relevant evidence.

**For example:**

1. Commodities subject to the off-sale action or other findings were produced, processed, packaged, priced, or labeled in accordance with applicable laws, regulations or requirements.
2. Devices subject to the “stop-use” order or “condemnation” were maintained in accordance with applicable laws, regulations or requirements.
3. Prescribed test procedures or sampling plans were not followed by the inspector.
4. Mitigating circumstances existed which should be considered.

(e) The reviewer must consider the inspector’s report, findings, and actions as well as any evidence introduced by the owner, distributor, packager, or retailer as part of the review process.

(f) The reviewer must provide a timely written recommendation following review unless additional time is agreed to by the department and the petitioner.

(g) The reviewer may recommend to the Department that an order be upheld, withdrawn or modified. If justified the reviewer may recommend other action including a reinspection of the device or commodity based upon information presented during the review.

(h) All actions should be documented and all parties advised in writing of the results of the review. The report of action should be detailed in that it provides the reasons for the decision.

2.6.11. Good Quantity Control Practices.

Good Quantity Control Practices means that the plant managers should take all reasonable precautions to ensure the following quantity control standards or their equivalent are met:

1. A formal quantity control function is in place with authority to review production processes and records, investigate possible errors, and approve, control, or reject lots.

2. Adequate facilities (e.g., equipment, standards and work areas) for conducting quantity control functions are provided and maintained.

3. A quantity control program (e.g., a system of statistical process control) is in place and maintained.

4. Sampling is conducted at a frequency appropriate to the product process to ensure that the data obtained is representative of the production lot.

5. Production records are maintained to provide a history of the filling and net content labeling of the product.

6. Each “production lot” contains on the average the labeled quantity and the number of packages exceeding the specified maximum allowable variation (MAV) value in the inspection sample shall be no more than permitted in Tables 2-1. Class of Scale and 2-2. Acceptance Tolerances for Class of Scale Based on Test Load Divisions in NIST Handbook 133.

7. Packaging practices are appropriate for specific products and measurement procedures (e.g., quantity sampling, density and tare determinations) and guidelines for recording and maintaining test results are documented.

8. Personnel responsible for quantity control follow written work instructions and are competent to perform their duties (e.g., background, education, experience and training). Training is conducted at sufficient intervals to ensure good practices.

9. Recognized procedures are used for the selection, maintenance, adjustment, and testing of filling equipment to insure proper fill control.

10. Weighing and measuring devices are suitable for their intended purpose, and measurement standards are suitable and traceable to national standards. This includes a system of equipment maintenance and calibration to include recordkeeping procedures.

11. Controls over automated data systems and software used in quantity control ensure that information is accessible, but changeable only by authorized personnel.

12. Tare materials are monitored for variation. Label changes are controlled to ensure net quantity matches labeled declaration.

2.6.12. Point-of-Pack Inspection Guidelines.

A. Weights and Measures Officials’ Responsibilities.

1. Conduct inspections during hours when the plant is normally open for business. Open the inspection by making contact with the plant manager or authorized representative (e.g., the quality assurance manager or the production manager).

2. Present the proper credentials and explain the reason for the visit (e.g., routine or follow-up inspection or consumer complaint).

3. Request access to quantity measurement equipment in the packing room, moisture testing equipment in the laboratory or in the packing room, and product packed on premise or stored in warehouse areas.

4. Obtain permission from a plant representative prior to using a tape recorder or a camera.

5. Conduct inspection related activities in a professional and appropriate manner and, if possible, work in an area that will not interfere with normal activities of the establishment.

6. Abide by all the safety and sanitary requirements of the establishment and clean the work area upon completion of the inspection/test. Return borrowed equipment and materials.

7. To close the inspection, recheck inspection reports in detail and ascertain that all information is complete and correct.

8. Sample questions and tasks for Inspectors:

1. Inside Buildings and Equipment.
2. Is all filling and associated equipment in good repair?
3. Are net content measurement devices suitable for the purpose being used?
4. Are standards used by the firm to verify device accuracy traceable to NIST?
5. Packing Room Inspection.
6. Observe if the program for net quantity of content control in the packing room is actually being carried out.
7. Ensure that the weighing systems are suitable and tare determination procedures are adequate. If there are questions regarding tare determination, weigh a representative number of tare and/or filled packages.
8. For products labeled and filled by volume and then checked by weight, ensure that proper density is used.
9. Warehouse Inspection.

If an inspection is conducted:

1. Select lot(s) to be evaluated.
2. Determine the number of samples to be inspected. Use the appropriate sampling plan as described in NIST Handbook 133, “Checking the Net Content of Packaged Goods.”
3. Randomly select the number of samples or use a mutually agreed on plan for selecting the samples.
4. Determine the average net quantity of the sample and use the standard deviation factor to compute the Sample Error Limit (SEL) to evaluate the lot.
5. Look for individual values that exceed the applicable Maximum Allowable Variation as found in NIST Handbook 133.
6. Apply moisture allowances, if applicable.
7. Review the general condition of the warehouse relevant to package integrity, good quantity control, and distribution practices.
8. Prepare an inspection report to detail findings and actions.

9. Close the inspection - Review findings with Plant Representative.

After the inspection, meet with the management representative to discuss inspection findings and observations. Provide additional information as needed (e.g., information on laws and regulations or explanations of test procedures used in the inspection). Be informative, courteous and responsive. If problems/violations are found during the inspection/test, bring them to the attention of the appropriate person.

B. Plant Management Responsibilities.

1. Recognize that inspectors are enforcing a federal, state or local law.

2. Assist the official in conducting inspection activities in a timely and efficient manner.

3. During the initial conference with the inspector, find out whether the inspection is routine, a follow-up, or the result of a consumer complaint. If a complaint, obtain as much information as possible concerning the nature of the complaint, allowing for an appropriate response.

4. The plant manager, quality assurance manager, or any designated representative should accompany the inspector.

5. Plant personnel should take note of the inspector’s comments during the inspection and prepare a detailed write-up as soon as the inspection is completed.

6. When an official presents an inspection report, discuss the observations and, if possible, provide explanations for any changes deemed necessary as a result of the inspection/test.

Plant Management: information that must be shared with the inspector.

1. Establishment name and address.

2. Type of firm and information on related firms or applicable information (e.g., sub-contractor, servant, or agent).

3. General description and location of shipping and storage areas where packaged goods intended for distribution are stored.

4. Commodities manufactured by or stored at the facility.

5. Names of responsible plant officials.

Plant Management: information that may be shared with the inspector.

1. Simple flow sheet of the filling process with appropriate net content control checkpoints.

2. Weighing or measuring device maintenance and calibration test records.

3. Type of quantity control tests and methods used.

4. Net content control charts for any lot, shipment, or delivery in question or lots which have previously been cited.

5. Method of date coding the product to include code interpretation.

6. Laboratory reports showing the moisture analysis of the products which are in question or have been previously cited.

7. Product volume of lot sizes or related information.

8. Distribution records related to a problem lots including names of customers.

2.6.13. Guideline for Verifying the Labeled Basis Weight of Communication and Other Paper.

(L&R, 1998, p. 27)

## 2.6.13.1. Equipment. – Linear measure recommended in Section 5.3.1. Equipment in the third edition of NIST Handbook 133 “Checking the Net Contents of Packaged Goods.”

• Scale with a minimum division of 0.5 g (0.001 lb) or less.

• Scientific calculator with a sample standard deviation function.

**2.6.13.2. Scope and Recommended Enforcement Approach.** – Paper is manufactured in various “basis weights” for use in different applications (e.g., copy paper can have a basis weight of 18 or 20 lb). Basis weight is part of the product identity and not a declaration of net contents. This procedure is used to audit the basis weight declared on package labels. If the tested packages in a sample do not have an average basis weight equal to or greater than the labeled basis weight, the inspection lot may be in violation. A potentially violative lot should be placed “off-sale” until the owner provides documentation to confirm that the labeled basis weight corresponds to the basis weight declared by the original manufacturer. If documentation is not provided, the inspection lot should remain “off-sale” until the basis weight declaration is corrected.

**2.6.13.3. Determine Target Net Weight for Common Types of Paper.** – The basis weight of paper is the designated weight (measured in grams or pounds per specified area) of one ream in basic sheet size for the type of paper being tested. This procedure permits the confirmation of basis weight by linear measurement and gravimetric testing. This procedure is designed to test the various types, size, count, and basis weights of packaged paper currently in the marketplace. Table 1 lists the “area of basic sheet size” for common types of paper. A “ream” equals 500 sheets of basic sheet size for all types of paper other than tissue paper. A “ream” of tissue paper equals 480 sheets. Each of the standard categories of paper products shown in Table 1 has a different standard basic sheet size. Although there are basic sheet sizes, paper is packaged and marketed in various sizes and counts. The net weight of packaged paper can be determined from the label information using the General Formula for Sheet Paper. For roll paper, use one (1) for the sheet count.

**General Formula for Sheet Paper**

*x*

*TNW*

*BSS*

*SC*



*PA x BW*

*500*

Where:

PA = measured area of one sheet of paper

BW = labeled basis weight

BSS = area of basic sheet size from Table 1

SC = labeled package sheet count

TNW = target net weight of paper

**2.6.13.4. Test Procedure.** – The following gravimetric, measuring, and counting procedures shall be used to determine if packages are accurately labeled. Procedures are also provided for verifying net quantity of content declarations for count and dimensions (e.g., length and width.)

**2.6.13.4.1. Sample Selection.** – Select a sample from an inspection lot using Table 2-1 Sampling Plans of Category A (page A‑2) in the fourth edition of NIST Handbook 133, “Checking the Net Contents of Packaged Goods.” Determine an average tare weight in accordance with Section 2 of the fourth edition of NIST Handbook 133.

**2.6.13.4.2. Determine Target Net Weight of Common Types of Paper Packaged in Various Sizes or Counts**.

Verify the basis weight declared on a package using the following gravimetric procedure:

a. Record the following information from the package label on a worksheet. (See Figure 1 for a sample label.)

1. Type of Paper (TP)

2. Length (L)

3. Width (W)

4. Package Sheet Count (PSC)

5. Basis Weight (BW)

6. Basic Size Sheet (BSS)

b. Compute the Target Net Weight (TNW) for the sample packages using the General Formula for Sheet Paper. TNW is what the paper should weigh if the labeled properties of the packaged paper are accurate.)

c. Determine the average net weight of the sample packages. (Do not use sample error limit calculations.) If the average net weight is not equal to or more than the Target Net Weight, go to Section 2.6.14.3. to determine if the labeled basis weight (BW) is correct. If the average net weight is equal to or more than the labeled basis weight, the sample passes.

**Basis Weight Worksheet** (see Figure 1)

|  |  |
| --- | --- |
| Type of Paper (TP): Copy Paper  Length (L): 11 in  Width (W): 8½ in  Area (PA) of Sheet (L×W): 93.5 in2  Package Sheet Count (PSC): 500  Basis Weight (BW): 20 lb  Basic Sheet Size (BSS): 17 in × 22 in  Area of BSS from Table 1 or 374 in2  by calculation:  Use the General Formula to compute Target Net Weight (TNW):  Target Net Weight (TNW) = 5 lb | **Figure 1. Sample Label**  **Example**  **White Copy Paper**  **75 g/m2 (20 lb) Bond**  Size: 216 mm × 279 mm (8½ in × 11 in)  Count: 500 Sheets |

**NOTE**: Three factors will cause actual sample weights to differ from the TNW:

Actual sheet count in package



Actual basis weight of paper being tested

Actual dimensions of the paper being tested

###### 2.6.13.4.3. Determine Basis Weight.

This procedure is used to identify potentially violative packages. If the Average Basis Weight (ABW) for the sample determined by this procedure is not equal to or greater than the labeled basis weight, other steps must be taken. Moisture affects the weight of paper, but the moisture content of paper can only be determined in a measurement laboratory according to the Technical Association of the Pulp and Paper Industry (TAPPI) (URL: [www.tappi.org/](http://www.tappi.org/)) TAPPI – T410 om-08, “Grammage of Paper and Paperboard (Weight per Unit Area).”

a. Verify the basis weight for each package according to the following steps:

1. Identify the paper type from Column 1 in Table 1 and record the area for the paper type from Column 2.
2. Select a sample of paper from each of the tare sample packages. Use a sample of exact count to eliminate the possibility that the packages are short count.

- For packages with more than 100 sheets, use 100 sheets; or

- For packages with 100 sheets or less, verify the sheet count and use all of the sheets.

1. Use a basis weight work sheet and determine the number of basic size sheets the paper sample represents with the following formula:

*x*

*ENBSS*

*EC*

A



*PA*

Where:

A = area of basic sheet size from Table 1

PA = area (l x w) of one sheet of paper

EC = exact sheet count of sample

ENBSS = equivalent number of basic size sheets

1. Determine the average basis weight,

Where:

BW = basis weight for each package

ABW = average basis weight

ENBSS = equivalent number of basic size sheets from step iii

NW = net weight of sample

RC = Ream Count (500; for tissue paper, use 480)

1. Repeat this step for each paper package from the tare sample and average the basis weights to obtain an Average Basis Weight (ABW). If the ABW is less than the labeled basis weight, or if the difference between the basis weight of the sample packages is more than 1 scale division, measure and compute the basis weight for each of the remaining packages.
2. Weigh each sample. If the basis weight from step iv is less than the labeled basis weight, re-calculate the target net weight by using the general formula for sheet paper.

|  |  |
| --- | --- |
| **Table 1. Common Types of Paper and Area of Basic Sheet Size** | |
| **Paper Type** | **Area** |
| Bond, Ledger, Thin, Writing, and Track Feed Printer Paper | 2412 cm2 (374 in2) |
| Manuscript Cover | 3599 cm2 (558 in2) |
| Blotting | 2941 cm2 (456 in2) |
| Cover | 3354 cm2 (520 in2) |
| Blanks | 3974 cm2 (616 in2) |
| Printing Bristols | 4135 cm2 (641 in2) |
| Wrapping, Tissue, Waxed, Newsprint and Tag Stock | 5574 cm2 (864 in2) |
| Book, Offset, and Text | 6129 cm2 (950 in2) |
| Index Bristol | 5019 cm2 (778 in2) |

1. Use the target net weight computed in step vi and re-weigh the inspection lot samples using the Section 2. of the fourth edition of NIST Handbook 133. If inspection sample weights differ from the target net weight computed using the average basis weight determined in vi, the label sheet count is probably inaccurate.

b. Verify the label sheet count by counting the number of sheets in each package.

c. Verify sheet dimensions (length x width) for each package of the sample.



###### 2.6.13.4.3.1. Other Types of Packaged Paper.

1. Roll Paper. – When testing rolled paper, cut a length of paper from the roll equal to 9350 divided by the width of the paper in inches. Make sure the ends of this length of paper are square. Proceed to section 2.6.14.3. step a. Disregard the exact sheet count in step iii.

2. Continuous Track Feed Printer Paper:

1. Count out a sample of 100 sheets from each tare sample package of the inspection lot.
2. Weigh each 100 sheet sample and record the weights.
3. Calculate an average weight.
4. Remove printer track feed strips from each sample.
5. Re-weigh each sample after the tractor feed has been removed and record the weights.
6. Calculate an average weight from step v.
7. Calculate percentage (%) difference in the average weights in steps iii and vi.
8. After the track feed strips have been removed, use the samples to verify the basis weight for the packages of the inspection lot using the formula in 2.6.14.2. If the basis weight is less than the labeled basis weight, refer to 2.6.13.2.
9. If the basis weight established in step viii is the same as the labeled basis weight, weigh the remaining packages from the sample and compare the actual net weights with the TNW. (Remember to adjust the TNW up by the percentage established in step vii.)
10. If the adjusted weights of the remaining samples is less than the TNW, the deficiency may have been caused by:

a. the sheet count in the package.

b. the basis weight of the paper.

c. the dimensions of the paper.

d. combinations of the above.

This procedure is for use in verifying that the basis weight included in a statement of identity is not misleading or deceptive. It is not intended to be used as the final criterion on which enforcement action is taken. Instead, the test procedure is only used to identify potentially volatile lots. There are two alternative actions that can be taken if the test results indicate that a lot is potentially volatile. The first is to review the documentation supplied by the original manufacturer to the converter to determine if any misrepresentation has occurred. The second is to collect packages of the paper and test them according to the latest version of ASTM International Method D646 for “Grammage of Paper and Paperboard.”

2.6.14. Labeling Guidelines for Chamois.

(L&R, 1999, p. L&R-25)

These requirements are based on the Uniform Packaging and Labeling Regulation in the 1999 edition of NIST Handbook 130, “Uniform Laws and Regulations” and regulations and guidelines of the Federal Trade Commission.

General

The following information must be declared on the principal display panel of the chamois package. The principal display panel is the tag, or label that consumers can examine under normal and customary conditions of display.

• Identity - what the package contains

• Net Quantity of Contents - how many items the package contains and the area of the item(s)

The following information may appear anywhere on the package.

• Responsibility – the party responsible for packaging or distributing the product.

**2.6.14.1. Declaration of Identity.** – Chamois is a natural product made of sheepskin which has been oil tanned. In 1964, the FTC issued an advisory opinion stating that using the word “chamois” on a product (e.g., “Artificial” Chamois, “Synthetic” Chamois, “Pig Chamois” or “Man Made” Chamois) that is not made from oil tanned sheepskin is unlawful and deceptive. Packages are required to declare identity in terms of:

1. the name specified in or required by any applicable federal or state law or regulation or, in the absence of this,
2. the common or usual name or, in the absence of this,
3. the generic name or other appropriate description, including a statement of function.

**Example:**

Chamois, Natural Chamois Leather

**2.6.14.2. Declaration of Net Quantity of Contents.** – The following information is required to appear on the lower 30 % of the principal display panel of all packages:

Count

• The package must include a count declaration (e.g., 1 Chamois) unless the statement of identity clearly expresses the fact that only one unit is contained in the package. A package containing two or more units shall bear a statement in terms of count (e.g., 2 Chamois).

Area

• Chamois packages must have area declarations in both U.S. customary and metric units.

Metric

• For areas that measure less than 1 m2, the area shall be stated in square decimeters and decimal fractions of a square decimeter or in square centimeters and decimal fractions of a square centimeter;

• For areas that measure 1 m2 or more, the area shall be stated in square meters and decimal fractions to not more than three places.

To facilitate value comparison and simplify the measurement process, chamois should be measured in one quarter square foot (2.322 57 decimeter) increments. Dimensions should be rounded down to avoid overstating the area.

For example: 2 square feet (18.5 square decimeters) or 2 ft2 (18.5 dm2)

**Conversion Factors:**

1 ft2  = 9.290 30 dm2

1 in2  = 6.451 6 cm2

1 yd2  = 83.612 7 dm2

**U.S. Customary Units**

• For areas that are less than 1 ft2 (929 cm2), the area declaration shall be expressed in square inches and fractions of square inches;

• For areas of 1 ft2 (929 cm2), or more, but less than 4 ft2 (37.1 dm2), the area shall be expressed in square feet with any remainder expressed in square inches or in fractions of a square foot;

• For areas of 4 ft2 (37.1 dm2) or more, the area should be expressed in terms of the largest whole unit (e.g., square yards, square yards and square feet, or square feet) with any remainder expressed in square inches and fractions of a square inch or in fractions of the square foot or square yard.

Chamois labeled for retail sale is exempt from these requirements if (a) the area of a full skin is expressed in terms of square feet with any remainder in terms of the common or decimal fraction of the square foot (929 cm2), or (b) the area for cut skins of any configuration is expressed in terms of square inches and fractions thereof. Where the area of a cut skin is at least one square foot (929 cm2) or more, the statement of square inches shall be followed in parentheses by a declaration in square feet with any remainder in terms of square inches or common or decimal fractions of the square foot.

**Prohibited Labeling Practices**

• Do not use qualifying terms or phrases (e.g., “Approximate Size,” “Size when Wet,” “Up to 20 % Larger When Wet”).

• Do not use unacceptable symbols (e.g., using (") as a symbol for inches is not acceptable).

**2.6.14.3. Declaration of Responsibility.** – The name and address of the manufacturer, packer, or distributor must be conspicuously specified on the label of any package that is kept, offered, exposed for sale, or sold anywhere other than the premises where packed. The name shall be the actual corporate name, or, when not incorporated, the name under which the company does business. This declaration does not have to appear on the principal display panel.

**For example:**

Chamois Tanning Company

8190 Main Road

Tarpon Springs, FL 34568

The address shall include street address, city, state (or country if outside the United States), and ZIP Code (or the postal code, if any, used in countries other than the United States); however, the street address may be omitted if it is shown in a current city directory or telephone directory.

**Sample Labels**

1. If one natural chamois is in a see through package, the following label would be acceptable:

|  |
| --- |
| **Natural Chamois Leather**  Distributed by:  Chamois Leather Co.  8190 Main Road  Tarpon Springs, FL 34568  **7** ft2 **(65 dm2)** |

2. The next sample would apply if one chamois is in a package and the statement of identity does not clearly express the fact the package only contains one unit.

|  |
| --- |
| **Chamois**  Chamois Leather Company  8190 Main Road  Tarpon Springs, FL 34568  One Chamois  **3** ft2 **(27.8 dm2)** |

2.6.15. Labeling Guidelines for Natural and Synthetic Sponges.

(L&R, 1999, p. L&R-31)

These requirements are based on the Uniform Packaging and Labeling Regulation in NIST Handbook 130, “Uniform Laws and Regulations” and regulations and guidelines of the Federal Trade Commission. All indicated dimensions and conversions from metric to U.S. customary units are approximate only and are used for illustration purposes only.

**General**

The following information must be declared on the principal display panel (PDP) of a package of sponge(s). The PDP is the part of label (or package) most likely to be displayed, presented, shown to or examined by consumers. A tag or spot label may be used.

• Identity – what the package contains

• Net Quantity of Contents – how many items in the package and the dimensions of the item(s)

The following information may appear anywhere on the package.

• Responsibility – the name of the processor or distributor

**2.6.15.1. Declaration of Identity.**

a. A declaration of identity that clearly describes the origin and other relevant information about the sponge must appear on the label of each package. The identity of a sponge must include information about its origin (i.e., is it a natural or synthetic sponge). The identity shall be in terms of (i) the name specified in or required by applicable federal or state law or regulation, or (ii) the common or usual name, or (iii) the generic name or other appropriate description.

**For example:**

Sea Wool Sponge, Rock Island Sponge, Sea Grass Sponge, Sea Yellow Sponge, or Atlantic Silk Sponge

• Origin - Natural or Synthetic

• For natural sponges, the label must specify if they are “Cut” or “Form.” “Cut” sponges are those that have been cut into halves, quarters, or fourths while “forms” are whole sponges.

• For natural sponges, indicate type of sponge (e.g., “silk,” “seawool,” or “yellow”)

b. Identifiers

• Terms which indicate locations of origin on some natural sponges (e.g., “Atlantic Sea Sponge”) are permitted to be used for identification if they accurately describe the source of the sponge.

• Use of terms that may be interpreted by consumers to imply quality, durability, or “expert” endorsement (e.g., “professional quality sponge”) are permitted as identifiers if they are not misleading. However, terms that imply quality should be used with care if they are not based on a recognized grading system. Use of terms to describe sponge texture such as “fine,” “medium,” or “coarse” are acceptable.

**2.6.15.2. Declaration of Net Quantity of Contents.** – The following information must appear on the lower 30 % of the principal display panel of all packages:

• Count

The package must include a count declaration (e.g., 1 sponge) unless the statement of identity clearly expresses the fact that only one unit is contained in the package. A package containing two or more units shall bear a statement in terms of count (e.g., 2 sponges).

• Dimensions

The package must include the dimensions of the sponges in inches and centimeters.

|  |  |  |
| --- | --- | --- |
|  | To facilitate value comparison and simplify the measurement process, sponges should be measured in ½ in (1 cm) increments. Dimensions should be rounded down to avoid overstating the size of a sponge.  **For example:**   * 6 in, 6½ in, and 7 in for inch declarations; * 15 cm, 16 cm, and 17 cm for metric declarations | |
| Silk Sponges | |  | |

• Synthetic sponges: the dimensions shall include length x width x height (thickness). Either unit of measure can be the primary declaration (e.g., the metric or U.S. customary units can be presented first).

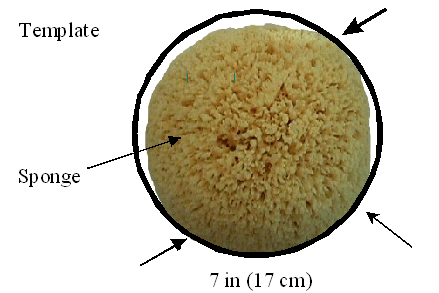
1 Sponge 17 x 10 x 5 cm (7 x 4 x 2 in)

• Natural sponges: the declaration shall be a single measurement representing the maximum dimension of one axis of a sponge that is passed through a circular template. When measured, the sponge is “classified” as a specific size when at least three (including two opposing) points of the sponge touch the template (e.g., see graphic on the following page where the sample sponge is designated as a 7 in [17 cm] sponge).

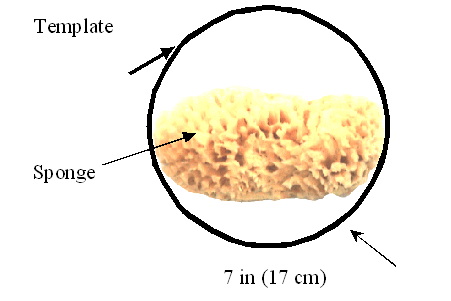
As the following pictures show, natural sponges are irregular in size and shape and have traditionally been measured using this procedure. It is difficult to develop a meaningful or cost effective measurement process that would provide a means of direct comparison between synthetic and natural sponges based on dimensions. Requiring declarations, such as average height, length, or width of natural sponge procedures would increase the costs for industry and consumers.

|  |  |
| --- | --- |
|  |  |
| Sea Wool Sponges | Sea Grass Sponges |

This graphic illustrates an irregular form of a natural sponge passing through a 17 cm (7 in) template and touching at least two opposite points. This sponge could be labeled 7 in.



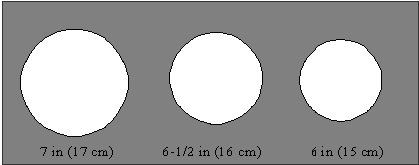
• For banana sponges the size will be determined as shown below. This sponge is 17 cm (7 in).



Good Measurement Practice

• Dimensions are determined with the sponge wet.

• Measuring templates (see photo below for the currently used type templates):



|  |  |
| --- | --- |
| ‑ should be constructed of rigid metal or plastic material.  ‑ circular openings should graduate in increments of one‑half inch (one centimeter).  ‑ The error in the circular openings shall not be greater than ± 1/32 in (± 0.79 mm) as specified in Table 2. Tolerances in Section 5.52. Linear Measures of NIST Handbook 44 “Specifications, Tolerances, and Technical Requirements for Weighing and Measuring Devices.” | Inspector matching up the sea sponges to sized holes to measure the sponge size. |

Prohibited Labeling Practices

• Stating country of origin declarations that are not accurate.

• Declaring ranges of dimensions (e.g., 4″- 5″ in) or using terms such as “half or semi form” instead of either “cut” or “form.”

• Using qualifying terms. (e.g., “Wet Size,” “Approximate” or “Jumbo”)

• “Anti-bacterial” claims must meet EPA requirements.

• Using type size that does not meet minimum height requirements.

• Using unacceptable symbols (e.g., using (") as a symbol for inches is not acceptable).

**2.6.15.3. Declaration of Responsibility.** – The name and address of the processor or distributor must be specified on the label of any package that is kept, offered, or exposed for sale, or sold anywhere other than the premises where packed. The name shall be the actual corporate name or, when not incorporated, the name under which the business is conducted.

**For example:**

Processed by

Argonaut Sponge Company

8190 Main Road

Tarpon Springs, Florida 34568

The address shall include street address, city, state (or country if outside the United States), and ZIP Code (or the postal code, if any, used in countries other than the United States); however, the street address may be omitted if this is shown in a current city directory or telephone directory.

**Sample Labels**

|  |  |  |
| --- | --- | --- |
| **Yellow Sponge Cut**  Argonaut Sponge Company  8190 Main Road  Tarpon Springs, FL 34568  **One ‑ 17.5 cm (7 in)** |  | If a natural sponge is in a box, carton, or package that does not permit consumers to see how many sponges are in the box, the package must include a count declaration (e.g., 1 sponge) unless the statement of identity clearly expresses the fact that only one unit is contained in the package. A package containing two or more units shall bear a statement in terms of count (e.g., 2 sponges). The following sample label would apply. |
|  |  |  |
| **Synthetic Sponge**  Made by:  Argonaut Sponge Company  8190 Main Road  Tarpon Springs, FL 34568  **17.7 x 10 x 5 cm (7 x 4 x 2 in)** |  | **Synthetic Sponge**  Made by:  Argonaut Sponge Company  8190 Main Road  Tarpon Springs, FL 34568  **1 ‑ Sponge 17.7 cm x 10 x 5 cm (7 in x 4 in x 2 in)** |

If a package does not permit the consumer to see how many sponges are the box, it must include a count declaration (e.g., 1 sponge) unless the statement of identity clearly expresses the fact that only one unit is contained in the package. A package containing two or more units shall bear a statement in terms of count (e.g., 2 sponges). A transparent bag of small pieces of sponge may be sold on the basis of count if the words “Irregular Dimensions” appear in conjunction with the declaration of count (e.g., 10 Sponges - Irregular Dimensions).

2.6.16. Minimum Fuel Flush for Octane Verification.

(L&R, 2000, p. L&R-13)

A minimum of 1.2 L (0.3 gal) of motor fuel shall be flushed from a dispenser before taking a sample for octane verification. The flush shall be returned to the storage tank containing the lowest octane.

THIS PAGE INTENTIONALLY LEFT BLANK