

**NIST Office of Weights and Measures (OWM)
Analysis**

**To the Regional Association Laws and Regulations (L&R) Committee
2021 Fall Meeting Agenda**

This includes all items that are on the 2021 Fall Regional Association Agenda’s for the Laws and Regulations Committee. All items are in chronological order by item number within the individual technical sections.

The term “Committee” means the Laws and Regulations Committee of the Western Weights and Measures Association.

“OWM” means the Office of Weights and Measures at the National Institute of Standards and Technology.

This document is submitted to offer preliminarily technical comments and other information to the WWMA Laws and Regulations Committee for consideration in its deliberations.

OWM may offer comments to supplement or clarify these comments or suggestions during the hearing and discussions of proposals under consideration.

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Subject Series List

NIST Handbook 130 – General	GEN Series
Uniform Laws	
Uniform Weights and Measures Law	WAM Series
Uniform Weighmaster Law	WMR Series
Uniform Fuels and Automotive Lubricants Inspection Law	FLL Series
Uniform Regulations	
Uniform Packaging and Labeling Regulation	PAL Series
Uniform Regulation for the Method of Sale of Commodities	MOS Series
Uniform Unit Pricing Regulation	UPR Series
Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices	RSA Series
Uniform Open Dating Regulation	ODR Series
Uniform Regulation for National Type Evaluation	NTP Series
Uniform Fuels and Automotive Lubricants Regulation	FLR Series
Examination Procedure for Price Verification	PPV Series
NCWM Policy, Interpretations, and Guidelines	POL Series
NIST Handbook 133	NET Series
Other Items	OTH Series

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Glossary of Acronyms and Terms

Acronym	Term	Acronym	Term
ASTM	ASTM International	LPG	Liquefied Petroleum Gas
API	American Petroleum Institute	MAV	Maximum Allowable Variation
CFR	Code of Federal Regulations	NEWMA	Northeastern Weights and Measures Association
CPSC	Consumer Product Safety Commission	NIST	National Institute of Standards and Technology
CWMA	Central Weights and Measures Association	NCWM	National Conference on Weights and Measures
DOT	Department of Transportation	NWS	National Weather Services
EPA	Environmental Protection Agency	OWM	Office of Weights and Measures
FALS	Fuels and Lubricants Subcommittee	PALS	Packaging and Labeling Subcommittee
FDA	Food and Drug Administration	S&T	Specifications and Tolerances
FPLA	Fair Packaging and Labeling Act	SWMA	Southern Weights and Measures Association
FTC	Federal Trade Commission	UPLR	Uniform Packaging and Labeling Regulation
HB	Handbook	USDA – FSIS	U.S. Department of Agriculture – Food Safety and Inspection Service
L&R	Laws and Regulations	WWMA	Western Weights and Measures Association

Details of All Items
(In order by Reference Key)

1 ITEM BLOCK 2 (B2) COMMERCIAL AND LAW ENFORCEMENT EQUIPMENT

- 2 B2: WAM-22.1 Section 1.11. Commercial Weighing and Measuring Equipment
3 B2: NTP-22.1 Section 2.15. Commercial and Law Enforcement Equipment

4 **Source:** NIST, Office of Weights and Measures

5 **Purpose:** Add clarification regarding the implications of using weighing and measuring devices for transactions that
6 may or may not be considered commercial transactions.

7 **NIST OWM COMMENT:** OWM receives inquiries from states requesting assistance in interpreting this definition.
8 This proposal was an outcome of the inquiries, and OWM believes this proposal will make it easier for the reader to
9 distinguish between commercial and non-commercial transactions and provides the necessary clarifications and
10 amendments.

11 Within the Uniform Weights and Measures Law, the term “equipment” is used in Section 1.11 that definition and
12 “devices” is used in this regulation. OWM is recommending harmonizing this definition across all the regulations and
13 handbooks. In addition, consideration should be given to determining if changing the title of the regulation to
14 “equipment” from “devices” is justified but, if that word is changed, the regulation’s title will also need to be revised
15 in Section 8 of the Uniform Weights and Measures Law.

16 Upon OWM reviewing the L&R and S&T’s agenda we recognize that minor change is needed to harmonize the
17 language across NIST Handbook 130 and 44 to provide for consistent terminology. Within Item B2: WAM-22.1.
18 there is a duplication of language that OWM will need to address. OWM also recognizes that within the Uniform
19 Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and
20 Measuring Devices, Section 2.3. a definition exists for Commercial and Law Enforcement Weighing and Measuring
21 Devices. We apologize for not having these changes done prior to the start of the WWMA.

22 This graphic illustrates how the definition may be applied in several different examples of commercial transactions:

Transactions that Use this Equation
are Examples of Commercial Transactions

Quantity \times **Unit Price** = **Total Price**

<ul style="list-style-type: none"> • Weight • Measure <ul style="list-style-type: none"> • Volume <ul style="list-style-type: none"> • Dry or Liquid • Cubic • Length, Width, Area, Thickness • Time • Count 	<ul style="list-style-type: none"> • Per gram, kilogram or ounce or pound • Per liter, fluid ounce, or gallon • Per cubic meter, cubic foot or cubic yard • Per sq meter, foot, yard or acre or thickness by mil or micrometer. • Per minute or hour • Price per each 	<ul style="list-style-type: none"> • For Buying • For Selling • For Service Charges • For mineral royalties and state and Federal Taxes
--	---	---

Must be in Units of Measurement Traceable to the International System of Units (SI)

This slide is not all inclusive and is for illustration purposes only – other units, unit pricing and applications will also fall under this definition

23

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	B2: WAM-22.1. Section 1.11. Commercial Weighing and Measuring Equipment B2: NTP-22.1. Section 2.15. Commercial and Law Enforcement Equipment						
	V	D	W	A	I	Opposed	Support
OWM Submitter	X						
WWMA Annual Meeting (2021 Fall)							

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	B2: WAM-22.1. Section 1.11. Commercial Weighing and Measuring Equipment B2: NTP-22.1. Section 2.15. Commercial and Law Enforcement Equipment						
	V	D	W	A	I	Opposed	Support
NEWMA Interim Meeting (2021 Fall)							
SWMA Annual Meeting (2021 Fall)							
CWMA Interim Meeting (2021 Fall)							
(Industry)							
NCWM L&R Committee Interim (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual Meeting (2022 Spring)							
NCWM L&R Committee Annual (2022)							

1

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

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

13 **B1: PAL-19.1 I Section 2.8. Multiunit Package**

14 **Source:** NIST, Office of Weights and Measures

15 **Purpose:** Eliminates conflicts between the UPLR and Federal Trade Commission (FTC) regulation for multiunit
 16 packages cited in 16 CFR 500.27.

17 **B1: NET-19.1 I Section 1.2.4. Maximum Allowable Variation (MAV)**

18 **Purpose:** Amend language regarding the total quantity declaration on multiunit or variety packages, when the MAV
 19 may need to be recalculated based on the Total Quantity MAV.

20 **B1: NET-19.2 I Sections 2.1. Scope, 3.1. Scope, 4.1. Scope, 2.3.7.1. Maximum Allowable**
 21 **Variation (MAV) Requirement, and Section 2.7.3. “Evaluation of Results –**
 22 **Compliance Determinations”**

23 **Purpose:** With the adoption of NIST Handbook 133, Chapter 5. Specialized Test Procedures this item clarifies the
 24 language within NIST Handbook 133.

25

1 **B1: NET-19.3 I Create a new Chapter 5. Specialized Test Procedures**

2 **Purpose:** Create new chapter in NIST Handbook 133 that has specialized test procedures to verify the inner contents
3 of multiunit and variety packages.

4 **B1: NET-19.4 I Appendix F. Glossary**

5 **Purpose:** This will add definitions for multiunit, variety and total quantity MAV into NIST Handbook 133, Appendix
6 F.

7 **NIST OWM COMMENT for Block 1:** This Block of Items have been on the L&R Agenda since 2019. OWM has
8 gradually modified these items based upon comments received at Regional and NCWM meetings. There have been
9 very limited comments with the exception of editorial changes. A concern at several of the Regional Association
10 Meetings requested that OWM simplify the steps within the test procedure. At this time, we do not believe members
11 have had ample time to apply the test procedure in the inspection work. OWM would like an opportunity to simplify
12 the steps in the test procedure to provide better clarity to the inspectors. This would also allow us time to use this in
13 our OWM training courses with inspectors that use HB133 on a consistent basis. After we have received additional
14 testing data and feedback, we will resubmit through NCWM for consideration. At this time OWM is requesting that
15 Block 1 be withdrawn in its entirety. OWM will also have this as a resource guidance document that the states will
16 be able to obtain from our office.

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	B1: PAL-19.1. Section 2.8. Multiunit Package B1: NET-19.1. Section 1.2.4. Maximum Allowable Variation B1: NET-19.2. Modify “Scope” for Chapters 2 – 4, and a note following Section 2.3.7.1. Maximum Allowable Variation (MAV) Requirement and 2.7.3. Evaluation of Results – Compliance Determinations B1: NET-19.3. Create a Chapter 5, Specialized Test Procedures B1: NET-19.4. Appendix F. Glossary						
	V	D	W	A	I	Opposed	Support
OWM Submitter			W				
WWMA Annual Meeting (2019)		X					
SWMA Annual Meeting (2021) (****)		X					
CWMA Annual Meeting (2021 Spring)		X					
NEWMA Annual (2021 Spring)	X						
WWMA Annual Meeting (2021 Fall)							
NEWMA Interim Meeting (2021 Fall)							
SWMA Annual Meeting (2021 Fall)							
CWMA Interim Meeting (2021 Fall)							
Industry							
NCWM L&R Committee Interim (2022)							
NCWM L&R Committee Annual (2022)							

1 **PAL – UNIFORM PACKAGING AND LABELING REGULATION**

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

4 **Source:** NIST, Office of Weights and Measures

5 **Purpose:** Clarify Section 8.2. Calculation of Area of Principal Display Panel for Purposes of Type Sizes and update
 6 illustrations.

7 **NIST OWM COMMENT:** These amendments will help clarify the procedures for determining the area of the
 8 principal display panel and correct errors and make improvements in several graphics that appear in this regulation.
 9 OWM recommends that this proposal be made a Voting item.

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	PAL- 22.3. Section 8.2. Calculation of Area of Principal Display Panel for Purpose of Type size						
	V	D	W	A	I	Opposed	Support
OWM Submitter	X						
WWMA Annual Meeting (2021 Fall)							
NEWMA Interim Meeting (2021 Fall)							
SWMA Annual Meeting (2021 Fall)							
CWMA Interim Meeting (2021 Fall)							
(Industry)							
NCWML&R Committee Interim (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual Meeting (2022 Spring)							
NCWML&R Committee Annual (2022)							

10 **MOS – UNIFORM REGULATION FOR THE METHOD OF SALE OF COMMODITIES**

11 **MOS-22.3 Section 2.4. Fireplace and Stove Wood.**

12 **Source:** New Hampshire Division of Weights and Measures

13 **Purpose:** To correct Part B. Uniform Regulation for the Method of Sale of Commodities and keep it consistent with
 14 Federal requirements and recognize products sold in the market that are not recognized in the current regulation. Also,
 15 the amendments will correct a couple of units of measure representations.

16 **NIST OWM COMMENT:** OWM agrees that adoption of this proposal to recognize shapes of manufactured
 17 firewood products other than logs and with some minor revisions the changes will clarify the use of some units. When
 18 units of measure are used in packaging and labeling regulations multiples of that unit or fractions of the unit are also
 19 permitted. When a regulation reads the net quantity of contents declaration must be in terms of the cubic foot it is
 20 defined as meaning that both fractions of a cubic foot (0.75 Cubic Foot) and multiples of a cubic foot may be used in
 21 conjunction with a quantity declaration (2 Cubic Feet). This is correct even if the term “feet” is not mentioned in the
 22 regulation.

1 It may be helpful to remind the Committee that packages of firewood are subject only to State regulation in the areas
2 of legal metrology requirements (i.e., the Federal Fair Packaging and Labeling Act [FPLA] does not apply). Therefore,
3 these packages may be labeled in only metric units (i.e., the liter). Under the UPLR packers have the option of
4 including a declaration of quantity in terms of the U.S. customary system of units under the exemption in 11.33. U.S.
5 Customary Units, Exemptions – Consumer Commodities.

6 Packers must have the flexibility to offer packages with a varying quantity of contents (package sizes). If a method
7 of sale or packaging or labeling regulation requires a commodity to be sold by the pound, fluid ounce or gallon the
8 intent of the regulation must be understood that does not mean that only 1 pound, 1 fluid ounce or 1-gallon quantities
9 may be offered or exposed for sale. Such a reading of the requirement would unintentionally impose package size or
10 other restrictions on packers.

11 In the 1990s, NCWM all but eliminated package size restrictions in method of sale of commodities regulations in
12 response to court cases, which found that package size restrictions, among imposing other burdens on businesses, and
13 interfered with interstate commerce. Any remaining package size requirement found in the uniform regulations today
14 are there because they are included in Federal laws.

15 OWM recommends the following revised language for Section 2.4.3. (a) and (d) to help clarify the regulation.

16 **2.4.3. Quantity.** – Fireplace and stove wood shall be advertised, offered for sale, and sold only by measure, using
17 the term “cord” and fractional parts of a cord or the cubic meter, except that:

18 (a) **Packaged natural wood.** – Natural wood offered for sale in packaged form in quantities less than
19 0.45 m³ (1/8 cord or 16 ft³) shall display the quantity in terms of:

20 (1) liters, ~~to include including~~ fractions or multiples of the of ~~a the~~ liter, ~~and A net quantity of~~
21 contents declaration may also include a declaration of quantity in ~~terms units~~ of the cubic foot ~~or~~
22 feet to include fractions or multiples of a the cubic foot i.e., cubic feet.

23 (Amended 2010, ~~and~~ 2016, ~~and~~ 20XX)

24 *NOTE: Implementation for the requirement for use of the liter in (1); packages may continue to show the cubic*
25 *decimeter (dm3) instead of liters (L) for four years after the effective date of this regulation to allow for the use*
26 *of current packages inventories.*

27 Effective date of enforcement shall be January 1, 2021.

28 (Added 2016) (Amended 2019 ~~and~~ 20XX)

29 (d) **Flavoring chips.** – Flavoring chips offered for sale in packaged form in quantities less than 0.45 m³ (1/8
30 cord or 16 ft²) shall display the quantity in terms of:

31 (1) liters, including ~~to include~~ fractions or multiples of the liter. A net quantity of contents
32 declaration may also include a declaration of quantity in ~~terms units~~ of the cubic foot or feet to
33 include fractions or multiples of the a-cubic foot (i.e., cubic feet).

34 (Added 1998) (Amended 2010, ~~and~~ 2016, ~~and~~ 20XX)

35 With the OWM recommended revision to the language we recommend that this proposal be a Voting Item.

36

Organization (* not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	MOS-22.3. Section 2.4. Fireplace and Stove Wood						
	V	D	W	A	I	Opposed	Support
Submitter	X						X
OWM Recommendation	X						

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	MOS-22.3. Section 2.4. Fireplace and Stove Wood						
	V	D	W	A	I	Opposed	Support
WWMA Annual Meeting (2021 Fall)							
NEWMA Interim Meeting (2021 Fall)							
SWMA Annual Meeting (2021 Fall)							
CWMA Interim Meeting (2021 Fall)							
(Industry)							
NCWM L&R Committee Interim (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual Meeting (2022 Spring)							
NCWM L&R Committee Annual (2022)							

1

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

3 **Source:** NIST, Office of Weights and Measures

4 **Purpose:** Update the Method of Sale of Commodities Regulation, Section 2.16. Compressed or Liquefied Gases in
 5 Refillable Cylinders to align with the U.S. Department of Transportation (DOT) requirements for the sale of LPG
 6 cylinders, that are enforceable after December 28, 2022.

7 **NIST OWM COMMENT:** OWM submitted these proposed amendments to avoid conflicts between the tare weight
 8 and other labeling requirements for compressed gas cylinders in the Method of Sale of Commodities Regulation and
 9 similar Federal regulations published by the U.S. Department of Transportation (DOT). If the conflicting provisions
 10 in NIST Handbook 130 are not revised before December 28, 2022, it is likely that the conflicting requirements in the
 11 Method of Sale of Commodities Regulation will be found by a court to be preempted by the DOT regulations. This
 12 is due to Congress giving DOT the exclusive authority to regulate in this area of law (e.g., safety and interstate
 13 commerce).

14 OWM recommends this proposal to be a Voting item and that an effective date of these amendments be December 28,
 15 2022 so they are effective on the same date as the new DOT regulations.

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	MOS-22.4. Section 2.16. Compressed or Liquefied Gasses in Refillable Cylinders.						
	V	D	W	A	I	Opposed	Support
OWM Submitter	X						
WWMA Annual Meeting (2021 Fall)							
NEWMA Interim Meeting (2021 Fall)							
SWMA Annual Meeting (2021 Fall)							
CWMA Interim Meeting (2021 Fall)							
(Industry)							
NCWM L&R Committee Interim (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual Meeting (2022 Spring)							

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	MOS-22.4. Section 2.16. Compressed or Liquefied Gasses in Refillable Cylinders.						
	V	D	W	A	I	Opposed	Support
NCWM L&R Committee Annual (2022)							

1

2 **MOS-20.5 Section 2.21. Liquefied Petroleum Gas**

3 **Source:** Arizona Department of Agriculture, Weights and Measures Services Division

4 **Purpose:** Provide clarity and consistency regarding the method of sale (MOS) for liquefied petroleum gas (LPG)
5 through a meter that has a maximum rated capacity of 20 gal/min or less.

6 **NIST OWM COMMENT:** The requirement for selling LPG based on a 60 °F gallon is already stated in this
7 regulation and applies to all sales. The current language in the regulation is vaguely written and has resulting in
8 conflicting interpretations. Some officials read the requirement that automatic temperature compensation be provided
9 on metering systems delivering more than 20 gal/ min as also exempting sales of LPG in other applications from being
10 sold and delivered using automatic temperature compensation.

11 • OWM recognizes that this proposal did not garner enough votes at the 2021 NCWM Annual Meeting and
12 was returned to the Committee.

13 • OWM recommends the Committee consider delaying the effective date in Section 2.21.2.(b) from January
14 1, 2023 to January 1, 2025.

15 OWM believes this proposal is fully developed and consideration should be given to delaying the effective date.

16

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed (*****) Returned to Committee	MOS-20.5. Section 2.21. Liquefied Petroleum Gas						
	V	D	W	A	I	Opposed	Support
OWM	X						
NCWM Annual Meeting (2021) (*****)	X						
WWMA Annual Meeting (2021)							
NEWMA Interim Meeting (2021)							
SWMA Annual Meeting (2021)							
CWMA Interim Meeting (2021 Fall)							
NCWM Interim Meeting (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual (2022 Spring)							
(Industry)							
NCWM L&R Committee Annual (2022)							

17

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

3 **Source:** National Biodiesel Board (NBB)

4 **Purpose:** To correct Part B. Uniform Regulation for the Method of Sale of Commodities and keep consistent with
 5 federal and industry requirements.

6 **NIST OWM COMMENT:** OWM suggests that when regulations are under revision that consideration be given to
 7 making them useable and easier for regulated businesses to comply and for inspectors to understand and enforce. The
 8 purpose statement for this proposal is to provide for a method of sale to ensure consistency with Federal and industry
 9 requirements. However, there are no industry standards included within the proposed language. For regulations to
 10 provide due process they must be written so they provide adequate notice to regulated businesses as to what they are
 11 required to do, to comply with the law. Finding specific requirements in the Code of Federal Regulations (CFR) is
 12 much easier if the citations are provided in a format as OWM proposes below for Item Block B4: MOS-22.1. “Section
 13 2.20.2. Documentation for Dispenser Labeling Purposes. and 2.20.3. EPA Labeling Requirements.”

14 For example, OWM searched the CFR and found:

- 15 • The Federal Trade Commission regulations in Title 16 CFR “Commercial Practices” Part 306 – “Automotive
 16 Fuel Rating, Certification and Posting” and there are specific labeling requirements for Biodiesel found in
 17 Appendix A. “Summary of Labeling Requirements for Biodiesel Fuels.”
- 18 • The Environmental Protection Agency regulations in Title 40 CFR “Protection of the Environment” Part
 19 1090 “Regulation of Fuels, Fuel Additives, and Regulated Blendstocks” Subpart P – “Retailer and Wholesale
 20 Purchaser-Consumer Provisions” in §1090.1515 “Diesel Sulfur Labeling Provisions”

21 OWM recommends that the Committee make it easier for regulated businesses to search the CFR in order to find the
 22 requirements and facilitate voluntary compliance. OWM recommends the proposal include the citations for the
 23 regulations for EPA and FTC product identity (and any specific industry standards as well if that is the submitter’s
 24 intent). OWM recommends with these changes that the Committee make this a Voting item.

25 For the convenience of the Committee, the URL for the Code of Federal Regulations (CFR) is: <https://www.ecfr.gov/>

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed (*****) Returned to Committee	MOS-22.5. Section 2.31.2.1. Labeling of Grade Required. and 2.31.2.2. EPA Labeling Requirements Also Apply.						
	V	D	W	A	I	Opposed	Support
Submitter	X						X
OWM	X						
WWMA Annual Meeting (2021)							
NEWMA Interim Meeting (2021)							
SWMA Annual Meeting (2021)							
CWMA Interim Meeting (2021 Fall)							
NCWM Interim Meeting (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual (2022 Spring)							
(Industry)							
NCWM L&R Committee Annual (2022)							

1
2 **NET – NIST HANDBOOK 133: CHECKING THE NET CONTENT OF PACKAGED**
3 **GOODS**

4 **NET-20.2 D Section 4.5. Polyethylene Sheeting, Bags and Liners.**

5 **Source:** New York State Weights and Measures

6 **Purpose:** Remove antiquated terminology used for test equipment to test the thickness of polyethylene sheeting, bags,
7 and liners.

8 **NIST OWM COMMENT:** OWM continues to support the development of this proposal. OWM had recommended
9 that the submitter also contact Ms. Alyson Flick (ASTM Staff Manager afick@astm.org (610) 832 - 9710) for ASTM
10 Technical Committee D20.19 “Film, Sheeting, and Molded Products.” The D20.19 Technical Committee who is
11 responsible for standard guide ASTM D6988 “Standard Guide for Determination of Thickness of Plastic Film Test
12 Specimens.” ASTM standards and often members of the technical committees from industry participate in
13 development of standards and will provide the needed clarification or guidance on how the test method was intended
14 to be used.

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	NET-20.2. Section 4.5. Polyethylene Sheeting, Bags and Liners.						
	V	D	W	A	I	Opposed	Support
Submitter		D					
OWM		D					
WWMA Annual Meeting (2021)							
NEWMA Interim (2021 Fall)							
SWMA Annual Meeting (2021)							
CWMA Interim Meeting (2021 Fall)							
NCWM L&R Committee Interim (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual (2022 Spring)							
(Industry)							
NCWM L&R Committee Annual (2022)							

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

17 **Source:** Mr. Ronald Hayes (Missouri, retired)

18 **Purpose:** Allow the use of digital density meters for package checking testing of viscous and non-viscous liquids.

19 **NIST OWM COMMENT:** OWM supports the development of this test procedure.

20 These devices are in widespread use in the verification of the net quantity of contents by legal metrology programs in
21 other countries to test a wide range of liquids including chemicals and oils. These devices are also widely used in
22 industry laboratories and their performance with many viscous and non-viscous products is proven.

1 OWM agrees with the submitter that these devices may be used in audit testing and screening of packaged
2 commodities for accurate quantity determinations. Inspectors should use the current procedures in NIST Handbook
3 133 for enforcement purposes. This practice should continue until studies provide sufficient evidence that these
4 devices can provide density values equivalent to those measured found using existing test methods.

5 OWM encourages that inspectors considering the use of these devices in determining product density to follow the
6 guidance provided in Section 3.X. Scope to have these devices compared to current test procedures in a calibration
7 laboratory. If that is not practical, it is important that inspectors using these devices in the field, also determine the
8 product density using HB133 Chapter 3. “Test Procedures – For Packages Labeled by Volume.” An inspector should
9 perform several comparisons of two density values to ensure they are identical before using any value from a density
10 meter to take enforcement action on packaged goods.

11 OWM also encourages users to share their test-method comparison data with the Committee so that it can be collected
12 and analyzed as part of the national process for recognizing these devices for use in a future edition of NIST Handbook
13 133.

14 The proposal includes a barometer in equipment requirement and then explains that a barometer or other means of
15 ascertaining atmospheric pressure may be used. It goes on to say the inspector’s smart phone can be used if it has a
16 pressure sensor.

- 17 • **Barometer (optional), or other device for obtaining the prevailing barometric pressure, with an**
18 **accuracy of ± 3.0 mmHg – Note: Smartphones with a barometer application that uses the phone’s**
19 **pressure sensor, have a typical accuracy of ± 0.2 mmHg (Comment: barometer is not necessary if**
20 **prevailing barometric pressure or altitude is known)**

21 OWM recommends that the Committee avoid the practice of allowing measuring sensors or unverified applications
22 on state or inspector owned smartphones in testing and enforcement actions. Any measuring device involved the
23 verification of the net quantity of contents of packaged goods should be evaluated for suitability and tested and
24 calibrated by the state’s metrology laboratory (or an accredited 3rd party testing laboratory.) There are other concerns
25 as well but, if the inspector can obtain the current local barometric pressure as shown on the National Weather Service
26 website at **National Weather Service (NWS)**, which provides local weather conditions including barometric pressure
27 by zip code search, that should be a more reliable and defensible resource than an unverified smartphone application
28 that may have been dropped and damaged. If the Committee finds the NWS website does not provide the needed
29 pressure reading within the required accuracy, then OWM recommends that the procedure be modified to require the
30 inspector have a certified barometer available for use during the inspection.

31 Another important question is if the manufacturers provide adequate means for ensuring the accuracy and traceability
32 of the built-in thermometers. This is because accurate temperature determinations are especially critical in making
33 density determinations using a 2 mL sample. Detailed guidance on taking samples is also needed to assure accuracy.
34 It is important that the sample be collected from the package using good measurement practice and that once collected
35 it be measured promptly to ensure that the temperature does not vary outside of the prescribed range.

36 Section 3.X.2. Test Procedure highlights the importance of bringing the sample packages to a stable reference
37 temperature. When OWM performed comparison tests years ago, the researcher found that the packages of product
38 under test had to “soak” in a stable temperature environment for up to 24-hours before a sample was taken. This is
39 because the larger the quantity and container type (wall thickness and material for example) the longer the “soak” is
40 required for product temperature to stabilize. When collecting sample packages from a location and transporting them
41 to a laboratory for testing it is a good practice to carry them in a cooler to keep the samples from getting too hot (or
42 too cold in the winter). For products that are too warm the use of a refrigerator or soaking watertight packages in a
43 sink of cool water reduces the soak time but, those conveniences, may or may not be readily accessible in field
44 locations. It is also essential that both the sample and the product temperature are representative of the total volume
45 of product in the container not just the upper levels of the package near the container’s opening. Temperatures near
46 the opening of the package can vary because warm room air enters the headspace and liquids in the neck of a thin
47 plastic bottle often warm or cool a little quicker than the large volume of liquid lower in the package. Temperatures
48 near the bottom of a package can also vary slightly due to the transfer of heat from the surface on which they are

1 placed for testing. While these variations in temperature are minor and likely do not have a significant impact on
2 volume, they do show that good measurement practices. inspectors will need to “soak” the packages at or near the
3 reference temperature for an adequate period, take representative samples and temperature readings of the product in
4 the package and ensure that measurements of density are taken promptly. These comments are provided to help the
5 Committee in its consideration of this proposal. It also reflects the need for the development of guidance on sample
6 collection and handling.

7 OWM joins with the submitter in highlighting the limitations of the types of liquids that can be tested using these
8 devices. The submitter provided the following in Section 2.X. Scope:

9 **This test method shall not be used for liquids with suspended solids such as orange juice with pulp,**
10 **buttermilk, liquids requiring “shake before use” (paint), or carbonated products (soda, beer, etc.) and all**
11 **products tested should be free of suspended gas, air, sediment, suspended matter, or substances not**
12 **approved by the digital density meter manufacturer.**

13 This was also confirmed in testing that OWM had previously performed, it was recognized that most devices would
14 not provide acceptable results if, the liquid had entrained air, the product was carbonated, or if it contained solids (e.g.,
15 flavored milks or juices, especially where shaking is recommended to mix the solids). It is important that the
16 manufacturer’s instructions be reviewed to determine if the meter under consideration is suitable for testing the
17 products that the official intends to examine. Density meter technology is constantly improving but earlier models of
18 devices tested by OWM about 20 years ago did not provide reliable test results over several different products that
19 were routinely inspected. Certainly, today’s meters will likely provide more accurate determinations of density over
20 a wider range of products, but OWM recommends that their performance be verified against the NIST Handbook 133
21 method to ensure both accuracy and repeatability. OWM also recommends that if these devices are to be evaluated
22 that comparisons should start with testing difficult to test viscous products listed in the proposal. They can be accepted
23 for use earlier and where their availability may provide the greatest return on the investment. OWM also recommends
24 that the Committee and anyone considering these meters for use in package control work read Guide 14 “Density
25 Measurement” published in 2011 by the Organization of International Legal Metrology (OIML) **g014-e11.pdf**
26 (**oiml.org**)

27 OWM requests that the Committee ask the submitter to clarify the title of Table 3.X. “Approximate Viscosities of
28 Common Materials for Viscosity Correction.” What is the source of these values and if they are “approximates” what
29 uncertainties are associated with the values? If they are scientifically valid can the submitter modify the title of the
30 table to remove the word “approximate” so that it is not interpreted as meaning the values are only close enough? The
31 use of that word in the table may open the test results to challenge later during an enforcement action.

32 **Oblong Containers**

33 In a separate comment the submitter reports that the “Current method in Section 3.4 Volumetric Test Procedures for
34 Viscous Fluids – Headspace” does not work for oblong plastic bottles often used for motor oil.” OWM was either not
35 aware of this issue or overlooked this statement in previous submittal of this proposal that came before the L&R
36 Committee. OWM encourages the Committee to request that the submitter provide information, pictures, and test
37 data on this issue to allow the Committee and OWM to investigate this type of problem. When OWM was developing
38 training courses on package control several oblong paint containers were tested using the headspace methods in NIST
39 Handbook 133 and those tests worked well and provided good test results. OWM does not dispute the submitter’s
40 statement but wishes to express the belief it merits further inquiry. Perhaps some amendments to the current headspace
41 test methods can be made to make them more appropriate for use with oblong motor oil containers. OWM believes
42 this effort will be justified because many jurisdictions will likely not purchase digital density meters for their inspectors
43 due to their cost. Ensuring the existing test procedures are valid for use with different package designs and containers
44 is essential.

45 **Viscous and Non-Viscous Liquids**

46 OWM encourages the Committee to solicit comments and suggestions to provide clearer terms and examples to
47 identify product types which fall under the classification of a viscous and non-viscous liquid. Packaging and labeling
48 regulations typically require that viscous liquids (such as ketchup, mustard) be sold by net weight not fluid measure
49 so devices may have a narrower range of application in testing of packages typically inspected by weights and
50 measures. The question of whether a product is viscous is a frequent question that we address in packaging and

1 labeling inquiries. Over the years OWM has also received several requests from the food industry for help in better
 2 defining the range of products that fall under the definitions. Such an effort would help inspectors and packers alike.
 3 It would certainly help others to see the types of products that these instruments may be most suitable for use in testing.
 4 If the terms were better defined or a listing of typical products were provided to illustrate a consensus opinion on these
 5 categories it could be added to the Interpretations and Guidelines Sections of NIST Handbook 130 and become a
 6 valuable reference in the future by ensuring the same product is labeled by the same units of measure for all
 7 manufacturers.

8 **Demonstration before the NCWM Laws and Regulations Committee**

9 After a test procedure has been fully develop the Committee may want to initiate a practice of having submitters
 10 demonstrate the complete procedure before the Committee (either in-person or video). This would allow for the
 11 procedure to be evaluated and better understood. OWM has found that several of the procedures adopted into NIST
 12 Handbook 133 at times omitted steps in the package inspection process, while others included specifications for test
 13 equipment that had to be fabricated. OWM also found there may not have been a design specification or drawings
 14 available for utilization by the states for ordering the equipment. In addition, we recommend that submitters refrain
 15 from creating active software spreadsheets. Some inspectors may not have the software, knowledge in using it, or
 16 availability of a computer at an inspection site.

17 OWM recommends that this proposal remain a Developing item for many of the reasons cited above.

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed (*****) Returned to Committee	NET-22.2. 3.X. Volumetric Test Procedure for Viscous and Non-Viscous Liquids by Portable Digital Density Meter.						
	V	D	W	A	I	Opposed	Support
Submitter	X						X
OWM		X					
WWMA Annual Meeting (2021)							
NEWMA Interim Meeting (2021)							
SWMA Annual Meeting (2021)							
CWMA Interim Meeting (2021 Fall)							
NCWM Interim Meeting (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual (2022 Spring)							
(Industry)							
NCWM L&R Committee Annual (2022)							

18

19

1 **ITEM BLOCK 3 (B3) CANNABIS**

- 2 B3: PAL-22.1 2.XX. Cannabis and Cannabis-Containing Products.
3 B3: PAL-22.2 10.XX. Cannabis and Cannabis-Containing Products
4 B3: MOS-22.2 1.XX. Cannabis and Cannabis-Containing Products and 2.XX. Cannabis and Cannabis-
5 Containing Products.
6 B3: NET-22.1. Section 1.XX. Cannabis and Cannabis-Containing Products and 2.XX. Cannabis and Cannabis-
7 Containing Products

OWM Comments for Block 3: Cannabis Proposals

OWM is offering additional comments and suggestions as the Committee and membership consider the Cannabis Block 3 Items.

OUTREACH

OWM recommends that the Committee request that NCWM Cannabis TG develop a strategy to reach out to these and other stakeholders and share all the Cannabis proposals. OWM recommends for example that the following organizations and others be invited to participate in the development of the proposed Cannabis regulations:

- National Cannabis Industry Association (**[NCIA | Advocating for the Responsible Cannabis Industry; thecannabisindustry.org](#)**)
- American Trade Association of Cannabis and Hemp (**[Home - American Trade Association of Cannabis and Hemp; atach.org](#)**)
- American Herbal Products Association (**[APHA](#)**)
- The Cannabis Alliance (**[The Cannabis Alliance](#)**)
- The Cannabis Cultural Association (**[Cannabis Cultural Association](#)**)
- Minority Cannabis Business Association (**[Minority Cannabis Business Association – To progress the cannabis industry by increasing diversity](#)**)
- National Association of Cannabis Businesses (**[NACB | National Association of Cannabis Businesses](#)**)
- Federal Agencies (FDA, DEA, TTB, and CPSC)
- Women Grow (**[Women Grow: Cultivating Cannabis Leaders](#)**)
- Other Trade Associations (**[Consumers Brands Association](#)**, **[Food Industry Association](#)**, **[National Retail Federation](#)**, Retail Industry Leaders Association (RILA)
- Consumer Groups (Consumer Reports, National Consumers League)

SURVEY TO THE STATES

OWM also requests that the NCWM survey the state directors prior to the 2022 NCWM Interim Meeting to obtain additional information. The survey questions should be prepared to obtain feedback on the following issues:

- Have Directors consult with their department’s attorney to determine if adding the definition and other cannabis proposed requirements to the uniform packaging and labeling regulation or method of sale for commodities regulations will cause a conflict with other state laws or regulations.
- Establishing the method of sale by weight and establishing minimum load requirement to NIST Handbook 44 are of course within weights and measures authority but some of the labeling and method

of sale requirements may not be within the current regulatory authority of some weights and measures programs.

- The most significant question is if state’s weights and measure law authorize the director to adopt rules and regulations that require ingredient labeling, safety warnings, potency declarations and if they allow the director to establish and enforce water activity limits and verify potency labeling.

The NCWM L&R Committee should strive to have this information completed by the 2022 NCWM Interim Meeting. They can determine how to proceed with the cannabis proposals on this agenda. OWM believes in gathering responses to these questions if can be determined by the L&R Committee as to what types of regulations are not within the director’s authority or if another agency has sole authority in these areas. Of special concern is if there are potential conflicts are found. Also, there are 19 states that automatically adopt the UPLR and the 18 states that adopt the MOS regulations automatically on the January 1 following their adoption which may be affected.

REGULATORY AUTHORITY

It is understood that it is the state legislature that establishes the boundaries of regulatory authority for state agencies and if those limits are exceeded the regulations will likely be invalidated, and any enforcement actions taken under those regulations will be void. A similar issue over authority to regulate in a new area of enforcement was raised and addressed by the NCWM in 1995 during the development of the EPO for Price Verification. During this time several states were advised by their legal counsel that unless state laws were amended by the legislature to allow the EPO it could not be used for enforcement purposes and inspectors did not have the authority to conduct inspections related to scanner accuracy. In response, the NCWM L&R developed subsection (q) for inclusion in Section 12. “Powers and Duties of the Director” in the Uniform Weights and Measures Law which gives weights and measures the authority to verify prices and take enforcement action using the EPO.

For reasons presented below, and other reasons, OWM does not agree with the statements that having the authority to recognize moisture loss or gain or test fuel quality allows weights and measures directors to establish a water activity limits. Other comments argue that fuel quality specifications serve as justification for setting specific product qualities but states that establish fuel quality requirements do so under the specific authority granted by their state legislatures to regulate fuel quality and not under an interpretation of their weights and measures laws (see for example the Uniform Fuels and Automotive Lubricants Inspection Law in NIST Handbook 130). In most states the authority to promulgate the types of labeling and method of sale requirements included among these proposals is delegated by legislatures to state health departments or to specially created cannabis regulatory agencies (e.g., Colorado Cannabis, or the Maryland Medical Cannabis Commission).

The OWM recommends that state directors consult with their legal counsel to ensure their law provides explicit authority in this area of regulation. If a state director determines that their authority does not extend to the requirements for water activity or the other cannabis labeling requirements OWM has developed draft language for consideration that would provide authority for cannabis regulation. (see heading “*Current Authority in Weights and Measures Law*”)

WATER ACTIVITY (additional comments are in Item B3: MOS-22.2)

OWM’s comments are based in part on the following:

- “Water activity is different from water content (or moisture content), which is a measure of the total amount of moisture in a material and is usually expressed as a percentage of the total amount (% of total weight).”¹
- Water activity is a primary concern in food safety. While water activity has a relationship to moisture content but “moisture content does not correlate as well as water activity with microbial growth, chemical stability, or physical stability.”² However, “water activity and moisture content are related through the moisture sorption isotherm.”¹
- The only reason weights and measures officials are concerned with moisture content is in determining whether variations in the net weight of packaged goods due to the loss or gain of moisture are reasonable.
- To define water activity and put the proposed water activity limits within context with other products (here the proposal requires the water activity of unprocessed cannabis to be 0.6 ± 0.05 whenever it is sold, or ownership transferred) OWM presents the following. The FDA defines the “water activity of a food is the ratio between the vapor pressure of the food itself, when in a completely undisturbed balance with the surrounding air media, and the vapor pressure of distilled water under identical conditions. A water activity of 0.80 means the vapor pressure is 80 percent of that of pure water.”³ FDA further explains that “most foods have a water activity above 0.95 and that will provide sufficient moisture to support the growth of bacteria, yeasts, and mold. The amount of available moisture can be reduced to a point which will inhibit the growth of the organisms.” FDA explains that if the water activity of food is controlled to 0.85 or less in the finished product, it is not subject to the FDA regulations (see 21 CFR Parts 108 “Emergency Permit Control,” 113 “Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers,” and 114 “Acidified Foods.”³)

OWM recommends that the Committee or Cannabis TG provide a document that includes specific citations to the studies and references or to the industry standards (e.g., ASTM) and the recommendations of the U.S. Pharmacopeia as these important references will be needed for the foreseeable future to allow for the development for use in developing training and in assisting the states in adopting enforcement policies and even test equipment requirements.

It is important to note the FDA statement “water activity increases with temperature.”¹ Since there is a strong connection between these two factors OWM recommends that the proposal be amended to include suitable storage temperature and humidity limits wherever unprocessed cannabis is sold or ownership transferred. Further, consideration should be given to requiring sellers and processors to maintain and share this type of data with inspectors during inspections because it may prove invaluable to the inspector in determining if the variations in water activity and quantity due to the loss or gain of moisture are reasonable. Many other factors including the product’s natural moisture content and consistency impact moisture content and time and air flow also impact the rate of moisture loss (as do temperature and humidity) but none of those factors are typically subject to regulation by weights and measures regulations. However, OWM acknowledges that for cannabis, especially if water activity limits are adopted into regulation storage area humidity and temperature may be justified and critical in helping the cannabis industry to avoid violations. It appears these would fall within “Current Good Distribution Practices” which must be met under both Federal and State packaging laws for other package requirements when reasonable variations must be allowed.

¹ See pccarx.com/Blog/why-water-activity-matters-in-pharmacy-compounding-rssid (Accessed 9/10/2021). Providing this URL to this commercial website does not mean that NIST endorses any product or service advertised on that website. This information is provided to assist the Committee in its consideration of this proposal.

² See: “**The What, How, and Why of Water Activity in Cannabis (cannabissciencetech.com)**” (Accessed 9/10/2021.). Providing this URL to this commercial website does not mean that NIST endorses any product or service advertised on that website. This information is provided to assist the L&R Committee in its consideration of this proposal.

³ **Water Activity (aw) in Foods | FDA** (accessed 9/10/2021)

When the current moisture allowances for many other under consideration by the NCWM there was no discussion or intent to establish water activity limits or specific moisture content limits for flour (typically 12 to 14 percent), pasta (31 to 32 percent during its plastic state when under production) or even meat and poultry products which may contain between 60 to 73 percent water. In part this is because weights and measures laws do not typically grant the director the authority to establish the moisture content limits for foods, drugs, or cosmetics. OWM recommends that Committee clearly state that weights and measures inspections to be conducted under this proposed regulation will limited to only cannabis that there is no intent to expand it to foods. This statement of intent early in the consideration process may be helpful to future readers of the historical record.

“When unprocessed *Cannabis* is sold, or ownership transferred”

OWM recommends that the Cannabis TG or Committee clarify how the language shown above is to apply in the real world that inspectors work in. OWM also recommends that the Cannabis TG or Committee provide examples of how an inspector is to enforce the water activity requirement without interfering with a commercial transaction. This may not be the submitter’s intent but as written and inspector cannot perform a water activity inspection of the cannabis until it is sold, or ownership transferred. That appears to put the inspector in a position of waiting until a commercial transaction is completed before compliance with this requirement is determined. Dependent on the time between the sale and inspection it raises potential challenges for the inspector because the buyer may have exposed the cannabis to mishandling or high temperatures. The water activity violation may be the fault of the buyer not the seller.

Enforcement problems like this arose frequently in the early years of package control when some legislatures passed similar legislation where the requirement for accurate net weight only applied to packages that had been sold. Under the laws written that style many states were left without the authority to inspect and test packages that were kept, offered for exposed for sale or sold until their legislatures amended these types of laws.

To ensure that inspectors have the authority to inspect products kept, offered, or exposed for sale or sold OWM recommends that the Committee consider amending this requirement as follows:

2.XX.X. Water Activity-When unprocessed *Cannabis*, is kept, offered, or exposed for sale, sold, bartered, or exchanged, or ownership transfers, the water activity shall be 0.6 (± 0.05). Unprocessed *Cannabis* is in compliance with this requirement unless the water activity is less than 0.55 or greater and 0.65.

This language will ensure consistency with that in the NIST Handbook 130, Uniform Weights and Measures Law under Section 12 “Powers and Duties of the Director” and will help ensure that this requirement can be effectively enforced at all levels of cannabis distribution and in any of the described transactions. OWM also recommends that the accuracy statement be clarified to clearly state the plus or minus values that must be exceeded for a violation to occur.

CONFLICT IN LAW OR REGULATION

The potential for conflict may be highest in states that have separate agencies with authority to regulate all aspects of cannabis sales. Directors in these jurisdictions may be concerned about the possibility of a conflict in law if cannabis definitions and other regulations are added to either of the uniform regulations. This would be especially true if the regulations were not identical to other state agency’s regulations already in effect. Another potential problem may arise if a State’s law does not allow cannabis to be sold for either recreational or medical purposes where the addition of requirements, for example a method of sale or label regulation, may be mistaken by a reader to permit cannabis to be sold because it is now included in state regulations. To avoid this situation a state director may use the state’s administrative rulemaking procedure to “reject or modify” the conflicting provisions of the uniform regulations but that process may take several months. If the survey reveals that adoption of some of the cannabis regulations may create these types of conflicts, OWM believes a simpler approach of removing the conflicting laws or regulations may be worth considering. One option is to have a note placed at with each cannabis regulation so that the enforcement of any conflicting requirement found in a uniform regulation would

automatically be permanently suspended. Below is a drafted language based upon NIST Handbook 44, General Code G-N.1. Conflict of Laws and Regulations which establishes the specifications, tolerances, and other technical requirements for weighing and measuring devices and where occasionally conflicts arise where safety or other regulations are in effect:

NOTE: Conflict of Laws and Regulations. – If any particular provision of the requirements in this section or subsection (include the section or subsection here for exactness) are found to conflict with existing federal or state laws or regulations (i.e., sale of cannabis is prohibited) or local ordinances relating to the definition, labeling, potency or other requirements for cannabis or cannabis containing products, the enforcement of such provisions shall be permanently suspended. Such suspension shall not affect the validity or enforcement of the remaining provisions of any other requirement in this regulation.

CURRENT AUTHORITY IN WEIGHTS AND MEASURES LAW

The survey may also reveal that a director has advisement from legal counsel that the State’s weights and measures law does not give the state director authority to regulate the types of cannabis labeling. If the Committee determines this is the case, regardless on the number of states, amended language will be required to the Uniform Weights and Measures Law to add the needed authority. OWM has drafted a new subsection (r) to add the appropriate regulatory authority to promulgate a variety of cannabis requirements to the Uniform Weights and Measures Law as was done for the price verification procedure in 1995. The following draft has language to reflect that the Director has the authority to set variations for potency, ingredients, warning labels, water activity and moisture loss or gain permitted when current good manufacturing and distribution practices are followed. If the Committee uses this draft it could then add additional areas of responsibilities in this emerging area of weights and measures regulation.

Be advised that OWM draft language omits references to “intrastate commerce” because when that provision is applied in conjunction with the terms and definitions in Section 12.1.2. “Variations Resulting from Exposure” in the UPLR, which reads that “so long as” the packages are in the control of the packager or person who introduces the packages into intrastate commerce that reasonable variations in net quantity caused by the loss or moisture loss or gain shall not be recognized, likely conflict the Federal Food, Drug and Cosmetic Act and regulations published by the FDA. This is a complex legal issue and would require too much space to fully explain but the issue was discussed in the NIST Handbook 133 Working Group many years ago and the consensus at the time among officials was that all packaged products should be treated the same regardless of whether they are in “intra-state” or “interstate commerce.”

OWM is trying to foresee potential problems with these proposals and is offering solutions that may allow for the adoption at the 2022 NCWM Annual Meeting. OWM recommends adding another Section in (2) which would allow the director to utilize accredited laboratories to perform testing when the states weights and measures laboratory does not have the capabilities. It also grants the director authority to employ a conformity assessment program. This could be a program where companies are inspected and accredited by a competent party, such as ASTM, who maintain accreditation and are subject to random audits to ensure compliance. This would allow the director to rely on alternative approaches instead of having their state metrology laboratory to obtain equipment and testing expertise they may not possess.

OWM believes that in the future weights and measures inspections will also need to employ increased interstate cooperation among weights and measures programs as well as conformity assessment, and accreditation programs to supervise the new ways commercial measurements are utilized. We see an increase of goods being delivered to homes directly from remote shipping facilities. The testing of prepackaged goods for testing will decline and that may lead to the need for states to reach out for assistance from other jurisdictions to investigate complaints. Assistance will be required to go into distribution points or point of pack to test packaged goods or assist in evaluating whether current good manufacturing practices are in place or to help in resolving moisture loss (or gain) issues.

Utilizing accreditation programs to ensure products compliance are currently in use around the world. An example of this is the U.S. Consumer Product Safety Commission (CPSC) having oversight of toys sold in the U.S. marketplace. The use of such systems would empower programs to focus on supervising the marketplace and using

risk assessments and audits to oversee far more than is possible with today’s resources. OWM often hears weights and measures plays catch-up instead of actively participating in the development of new areas of commercial weighing and measurement. One way to take a larger step in any field of weighing and measurement is to be able to provide leadership and marketplace supervision using new approaches and looking for opportunities in the emerging areas of legal metrology regulations (e.g., electric vehicle charging systems and GPS transportation systems). Recognizing these options would be a good first-step for cannabis.

OWM also recognizes that regulation of cannabis packaging is different than other packaged products in the marketplace. Current authority for weights and measures regulations typically cannot prescribe the type and color of packaging, the use of production codes, manufacture date, warning labels cannabis symbols, or other requirements. UPLR regulations cannot dictate whether the product can look like candy or baked goods or whether labels can display a picture of a cartoon character. But those aspects are part of the regulatory powers given to cannabis regulatory agencies in many states, and those local requirements vary depending on whether the state legislature allows recreational use or only medicinal use cannabis. In most jurisdictions only the legislature can grant enforcement authority to regulatory agencies and sometimes there is overlap.

There are numerous examples from the past that show conflicting requirements and inspection procedures can be avoided through cooperation. Most states that have a Department of Agriculture also have a state chemist and seed control laboratory, that have regulatory authority to prescribe net quantity of contents requirements. They work closely with the weights and measures division for guidance and assistance in ensuring that labeling regulations are consistent. The inspectors who carry out inspections have the authority as well as the training and equipment to perform the inspections and tests properly and uniformly. A similar solution is for weights and measures agencies to work collaboratively with the state agencies, that have authority to prescribe cannabis labeling, and to ensure any other agency’s labeling requirements for legal metrology (which relate to declaration of identity, net quantity and responsibility and type size etc.) are consistent with the UPLR.

OWM offers to the Committee the following draft language to the Weights and Measures Laws for consideration:

Section 11. Powers and Duties of the Director

The Director shall:

(r) for Cannabis and Products Containing Cannabinoid(s)

(1) Prescribe by regulation:

- i. **reasonable variations in quantity caused by the loss or gain of moisture during current good distribution practice or by unavoidable deviations in current good manufacturing practice and procedures for moisture determination;**
- ii. **labeling requirements for and defining reasonable variations in water activity that occur in current good manufacturing practice and current good distribution practice and procedures for the measurement of water activity;**
- iii. **labeling requirements for and define reasonable variations in levels of cannabinoid: delta-9 THC, delta-8 THC (potency) that occur in current good manufacturing practice and current good distribution practice and procedures for the measurement of potency; and**
- iv. **packaging and labeling requirements that may include, among other requirements, the characteristics of the packaging (e.g., color) and type of packaging (e.g., tamper evident, childproof), requirements for identity, ingredients, product lot code and date of packaging, contact information of the packer, special symbols or warnings, and potency.**

The requirements may also include prohibitions on packaging that may be misleading or confusing.

(2) The Director may prescribe by regulation, programs that utilize accredited testing laboratories and may enter into agreements to utilize conformity assessment programs and other technical services to ensure compliance with any of the prescribed requirements.

CANNABIS FORMATTED AS ITALICIZED TEXT

Within the proposed section title, the term *Cannabis* is italicized. When label designers see terms presented in italics in a regulation, they may interpret that to mean the same text also has to appear on the package label in italics. It may reduce the chance for confusion if the Committee makes it clear whether the term *Cannabis* must appear on the package label in italics or not. In issue in the 1960s occurred when the Federal Trade Commission (FTC) published their first regulations under the FPLA. FTC submitted the regulations to the Government Printing Office (GPO) with the symbol and abbreviations for units without periods. To address the concerns of the packers on limited package spacing the drafters felt that excluding the “period” would provide packers additional space they required. The misstep was the GPO editors applied government publication formatting and applied the period on all the symbols for units as abbreviations. The rules were published, and periods were added to labels because of how they were expressed within the regulation, even though a separate section stated “periods” were optional. A lesson learned that if you put a term in a regulation in “italics” lawyers, label designers, and inspectors may interpret the regulation as that is shall be shown on the label in that formatting style.

OWM recommends this proposal as modified and that the requested survey of states be included as part of the Committee report. OWM recommends survey questions be presented to state directors promptly. This will allow adequate time for them to consult with legal counsel and provide their responses to the NCWM prior to the 2022 Interim Meeting. With all of the information identified above and the OWM recommended modifications, we recommend it as a Voting item, if not we recommend it as either Developmental or Informational.

- 1 **B3: PAL-22.1 Section XX. Cannabis and Cannabis-Containing Products.**
- 2 ****Correct title:** B3: PALS -22.1. Section 2. Definitions 2.XX Cannabis and Cannabis-Containing Products.
- 3 **Source:** NCWM Cannabis Task Group
- 4 **Purpose:** Establish a definition of *Cannabis* and *Cannabis*-containing products for use in NIST Handbook 130
- 5 Uniform Packaging and Labeling Requirements.
- 6 **NIST OWM COMMENTS:**
- 7 OWM recommends that the definition in 2.X.X. **Cannabis and Cannabis-Containing Products** be reordered to
- 8 provide clarity and readability so that the 0.3 percent or less value wording appears first and the more than 0.3 percent
- 9 wording appears second. OWM recommends also that the word “percent” and not the symbol be used; that the word
- 10 “definition” be substituted for section; and that “contains” be used instead of containing.
- 11 OWM proposed rewording for the definition of Cannabis found within the UPLR:
- 12 **2.XX. Cannabis and Cannabis-Containing Products – Cannabis is a genus of flowering plants in the family**
- 13 **Cannabaceae, of which Cannabis sativa is a species. This definition includes products that contain 0.3**
- 14 **percent or less of Total Delta-9 THC (also known as Hemp) and products that contain more than 0.3**
- 15 **percent of Total Delta-9 THC (also known as Cannabis, Marijuana or Marihuana).**
- 16 OWM recommends that consideration be given for the OWM proposed language in B3: PAL-22.1 and recommend
- 17 it as a Voting item.

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed (*****) Returned to Committee	B3: PALS -22.1. Section 2. Definitions 2.XX Cannabis and Cannabis-Containing Products.						
	V	D	W	A	I	Oppose	Support
Submitter	X						
OWM	X						
WWMA Annual Meeting (2021)							
NEWMA Interim Meeting (2021)							
SWMA Annual Meeting (2021)							
CWMA Interim Meeting (2021 Fall)							
NCWM Interim Meeting (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual (2022 Spring)							
Industry							
NCWM L&R Committee Annual (2022)							

1 **B3: PAL-22.2 Section 10.XX. Cannabis and Cannabis-Containing Products.**

2 ****Correct title:** Section 10. Exemptions, 10.XX Cannabis and Cannabis-Containing Products

3 **Purpose:** Establish uniform packaging and labeling requirements for *Cannabis* and *Cannabis*-containing products.
 4 This proposed regulation includes a potency labeling requirement and a requirement that mg per serving be declared.

5 **NIST OWM COMMENT:** The application of this section is clearly stated that it only applies to products that contain
 6 cannabis, so no exceptions need be included. OWM recommends that 10.XX be revised as shown below.

7 **10.XX. Cannabis and Cannabis-Containing Products- Any Cannabis or Cannabis-containing products,**
 8 **with the exception of commodities listed under Section 10.9 Textile Products, Threads and Yarns and other**
 9 **non-food products not intended for human or animal application, shall bear on the outside of the package**
 10 **the following:**

11 OWM submits the following questions to the Committee about how this regulation is to be interpreted and enforced:

12 **“Shall Bear on the Outside of the Package...”**

13 Weights and measures regulations for declaration of identity and net quantity of contents require specified information
 14 to appear on the principal display panel. The declaration of responsibility may appear anywhere on the package. On
 15 this proposal the “declarations” are required to appear “on the outside of the package.” This is a new placement
 16 requirement, and for future reference, it would be helpful if the submitter provide a complete explanation as to why it
 17 requires a placement outside the requirement. OWM assumes this is a specific prohibition against putting any of the
 18 required information on the package, where it is in anyway obscured (on inner wrappings or behind a peel-up label
 19 such as you see on bottles of pain medication is not allowed). Are we correct in understanding this requirement to
 20 mean that no exemption will be allowed? If that is the intent, it would help if the Committee added that to the historical
 21 record of the conference reports. They should indicate the submitter did not intend to allow any of information
 22 required under this section to be obscured in any way or presented on “easily” accessible inner labeling? We are
 23 asking for clarification because a similar question came up in a meeting with a cannabis packager who wanted to know
 24 some of the other information required under the UPLR information could be placed inside the package where it was
 25 still “easily” accessible like the peel-up labels consumers see on bottles of aspirin.

1 **“Contains Cannabis”**

2 In trying to understand how the requirement in Section 10. Exemptions, 10.XX Cannabis and Cannabis-Containing
3 Products will interact with other requirements within the UPLR we referred to Section 3.1. “Declaration of Identity –
4 Consumer Package” which requires a package to have a product identity on the principal display panel. The name for
5 the product must be as listed in federal or state law, or the common or usual name or a generic name. The proposal
6 reflects an ingredient labeling requirement that requires the words “Contains “*Cannabis*” to be shown somewhere on
7 the principal display panel. As the area of the label on small packages is already limited OWM asks the Committee
8 if any consideration would be given to making this ingredient statement optional, if the product identity includes the
9 term “*Cannabis*”?

10 **Will placing the Delta-9 THC potency information on the bottom of the package or bottle be permitted?**

11 One frequently asked question in labeling compliance is “may the declaration of responsibility (or other) information
12 appear on the bottom of the box or bottle?” If it is acceptable for the potency or mg/serving information to appear on
13 the bottom of the box or bottle the current language certainly permits that. If the Committee does not intend to permit
14 any of the required information to appear on the bottom of the box or bottle OWM recommends that a specific
15 prohibition to the regulation be added.

16 It is not clear as to what this proposal is trying to accomplish with regard to the exemption, making it difficult to assess
17 the proposal. If the exemption is intended to apply to non-food products, then simply exempting non-food products
18 would be sufficient. Without any other rationale to justify including it, referencing Section 10.9 adds unnecessary
19 complexity to the requirement., making it difficult to assess the proposal. If companies are claiming or referencing
20 clothing or other products has having “cannabis” in it/them, what is the intent of doing so? Are companies trying to
21 imply some advantage or benefit? If so, how is the consumer to assess that benefit or advantage? Without such
22 assessment criteria, might such claims be considered misleading?

23 We question how an inspector, or a company know when the exemption would/would not apply? It is not clear what
24 is mean by the reference to “application.” This term needs to be better defined or explained. Does this include
25 consumption? If so, might a better reference be “consumption or application?” If the intent is to only apply the
26 requirement to “products for human consumption or application” then a simpler alternative might be to simply limit
27 the paragraph accordingly. For example, “Cannabis and Cannabis-Containing Products Intended for Human
28 Consumption or [Application].

29 Possibly the submitter can provide an additional background information or a justification explaining the rationale. Is
30 this is needed in order for officials and industry to make an informed decision on the proposed requirement?

31 OWM does offer up an example with removing the exemption language:

32 **10.XX. Cannabis and Cannabis-Containing Products – Any Cannabis or Cannabis-containing products,**
33 **shall bear on the outside of the package the following:**

34 **(a) On the principal display panel**

35 **(i) The statement “Contains Cannabis.”**

36 **(b) On any panel or surface of the package**

37 **(i) The statement “Contains more that 0.3% Total Delta-9 THC” or “Contains 0.3% Total Delta-**
38 **9 THC or less.”**

39 **(ii) A declaration of the number of milligrams of each marketed cannabinoid per serving or**
40 **application.**

41 Some additional comments and suggestions.

- 1 • In the proposal the term *Cannabis* is italicized. As mentioned in the OWM comments on Block 3. when
 2 readers see terms presented in italics in a regulation, they may interpret that to mean the same text also has
 3 to appear on the package label in italics. It may help to reduce confusion if the Committee makes it clear
 4 whether the term must appear on the package label in italics or not.
- 5 • The mg/serving statement should also be rewritten to use the term “quantity” instead of “number.” For
 6 example:

7 **(ii) A declaration of the quantity in milligrams (mg) of each marketed cannabinoid per serving.**

8 **Test Methods**

9 When adopting a regulation that requires packers to have the THC levels displayed on their packages it is essential
 10 that the Committee provide information on the acceptable test methods to be used for enforcement. When placing
 11 any regulation of this type, the States (as well as the cannabis industry), must be able to test and verify the labeled
 12 claim or the regulation will not provide the intended protections. OWM agrees this is an essential labeling requirement
 13 for this commodity and believes enforcement will be critical for use in ensuring safety and preventing fraud and unfair
 14 competition. To see why this regulation is justified the Committee should review the type of problems FDA is finding
 15 with CBD labeled products and strength claims at **Warning Letters and Test Results for Cannabidiol-Related**
 16 **Products | FDA).**

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed (*****) Returned to Committee	Section 10. Exemptions, 10.XX Cannabis and Cannabis-Containing Products						
	V	D	W	A	I	Opposed	Support
Submitter	X						X
OWM							
WWMA Annual Meeting (2021)							
NEWMA Interim Meeting (2021)							
SWMA Annual Meeting (2021)							
CWMA Interim Meeting (2021 Fall)							
NCWM Interim Meeting (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual (2022 Spring)							
(Industry)							
NCWM L&R Committee Annual (2022)							

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

19 **Source:** NCWM Cannabis Task Group

20 **Purpose:** Create a new section in the Uniform Regulation for the Method of Sale of Commodities in NIST Handbook
 21 130 for *Cannabis* and *Cannabis*-Containing Products. Given the nature of these products, they need to be included in
 22 both, the Food and Non-Food sections of this regulation.

23 **NIST OWM COMMENT:** OWM recommends that the Committee move only partial sections of this proposal
 24 forward as a Voting Item. The Committee will need additional time to address the requirements for limits on water

1 activity, in additional answers to whether the state director’s authority under the State’s weights and measures law
2 extends to promulgating the labeling requirements (e.g., warning statements, potency, ingredients and water activity)
3 (see NIST OWM Comments in B3: PALS -22.1. Section 2. Definitions 2.XX Cannabis and Cannabis-Containing
4 Products.”.)

5 As noted in the OWM comments on Block 3, we also highlighted below Item B3: PAL-22.1, water activity is
6 associated with product quality and must be controlled by the packer of foods, drugs, and cosmetics to maintain
7 product consistency and quality, and to avoid mold or product spoilage. These are health, safety, and other quality
8 characteristics. The fundamental purpose of weights and measures laws is to ensure that declarations of **quantity** are
9 accurate so consumers can make price and quantity comparisons which ensures equity and fair competition in
10 the marketplace. Both Federal and State packaging and labeling laws require that reasonable variations in **quantity**
11 caused by the loss or gain of moisture must be allowed if they increase or decrease the **quantity** of a desiccating
12 product. Weights and measures law do not define how much moisture a product must contain but only how the loss
13 or gain of moisture changes the **quantity** beyond reasonable limits. The laws were written to prevent economic fraud
14 and typically do not to give weights and measures directors authority to expand inspection programs into other areas
15 of regulation such as food safety or quality. Therefore, in general, weights and measures inspectors do not enforce
16 ingredient, potency, drug content, safety labeling, and water activity on other products in the marketplace solely under
17 labeling authority granted under their current weights and measures laws.

18 The Committee should request the NCWM Cannabis TG and the cannabis industry, and trade associations provide
19 scientific studies and other information to justify and validate the limits of water activity requirements stated within
20 the proposal. The Committee can have the data evaluated by a qualified panel of experts who could also assist in
21 developing the justifications and technical language in the regulations. It is important to have due process and that
22 growers, packers, distributors, retailers, and other stakeholders have adequate notice and an opportunity to comment
23 on the water activity limits especially when violations of any regulations promulgated by the state may involve civil
24 or criminal penalties including imprisonment. In developing of any law or regulation, it is important to balance the
25 risks to consumers against the potential penalties. Consideration should be given for alternative approaches in
26 addressing the problems caused by water activity, in lieu of criminalizing violations to control product potency or
27 prevent spoilage. In all scientific procedures there are measurement uncertainties that should be consideration before
28 a person is exposed to criminal or civil prosecution. For these reasons, OWM recommends that the Committee seek
29 out expert advice and establish reliable tolerances for water activity measurements to ensure both due process and
30 fairness.

31 The Committee should also seek expert assistance in developing the inspection and sampling procedures necessary to
32 carry out enforcement, in addition to providing guidance to the States on appropriate test procedures. If field testing
33 is contemplated, guidance on test equipment specifications and tolerances must be developed. When setting
34 equipment specifications and tolerances, consideration should be given to NIST Handbook 44, Appendix A.
35 Fundamental Considerations, Section 3. “Testing Apparatus.” In addition, the state metrology laboratory will need to
36 be training and equipped to certify the devices used in field inspection. These important components should be
37 developed and included with the water activity proposal before it is submitted for consideration to the NCWM. When
38 a water activity limit is adopted, the states will be then be prepared to implement inspections and enforcement.

39 OWM commends the NCWM Cannabis Task Group for its outstanding work on developing these proposals. If these
40 proposals move forward and the NCWM Cannabis Packaging and Labeling Subcommittee is disbanded, OWM
41 recommends that Committee establish a Cannabis Packaging and Labeling Work Group within the Packaging and
42 Labeling Subcommittee (PALS). This will allow the work to be closely integrated with the L&R Committee and
43 allow it to better lead in its development of the water activity and moisture loss and gain projects. This will also allow
44 for coordination in the development of the field inspection sampling and laboratory testing programs that will be
45 needed to implement enforcement programs following the adoption of regulations in these new areas.

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed (*****) Returned to Committee	B3: MOS-22.2. Section 1.XX. Cannabis and Cannabis-Containing Products and 2.XX. Cannabis and Cannabis-Containing Products.						
	V	D	W	A	I	Opposed	Support
Submitter	X						X
OWM							
WWMA Annual Meeting (2021)							
NEWMA Interim Meeting (2021)							
SWMA Annual Meeting (2021)							
CWMA Interim Meeting (2021 Fall)							
NCWM Interim Meeting (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual (2022 Spring)							
(Industry)							
NCWM L&R Committee Annual (2022)							

1 **B3: NET-22.1 Section 1.XX. Cannabis and Cannabis-Containing Products and 2.XX.**
 2 **Cannabis and Cannabis-Containing Products.**

3 **Correct title should read:** B3: NET-22.1. HB133, Section 1.2.6. Deviations Caused by Moisture Loss or Gain and
 4 Section 2.3.8. Table 2-3 Moisture Allowances.

5 **Source:** NCWM Cannabis Task Group

6 **Purpose:** Establish an acceptable net weight allowance for *Cannabis*, which is related to the MOS Form 15 related to
 7 water activity and the Packaging and Labeling Form 15 Sections 2 and 10.

8 **NIST OWM COMMENT:** OWM is recommending this Item be removed from the Block 3 and returned to the
 9 Cannabis TG for further development.

10 For the reasons provided OWM does support the development of this proposal. As an interim measure the Committee
 11 can provide the values as guidance for state inspectors to use in their net quantity of contents inspections. OWM has
 12 provided similar guidance in the past for other products based on information from FDA.

- 13 • Since the 1980’s, OWM has worked with NCWM on moisture loss studies beginning with the creation of the
 14 NCWM Task Force on Commodity Requirements. The NCWM Task Force developed the Guidelines for
 15 NCWM Resolution of Requests for the Recognition of Moisture Loss in Other Packaged Foods (see NIST
 16 Handbook, NCWM Policy, Interpretations and Guidelines Section 2.5.6. in VI at **00-20-h130-vi-final-4.pdf**)
 17 which the NCWM adopted in 1988. Since its adoption, industry who contacts OWM for advice on how
 18 moisture allowance is developed is advised to follow the NCWM guidance. The rice industry and bar soap
 19 manufacturers approached OWM for information and were provided this advice. The pet food industry and
 20 pasta industries have both followed the NCWM guidance for moisture loss recognition and have been
 21 successful with proposal for moisture allowances being adopted by NCWM. In the interest of due process,
 22 interest of its own guidelines, and the precedents it has followed for more than 33 years, OWM recommends
 23 the Committee advise the cannabis industry to apply the same NCWM guidance. They would need to conduct
 24 a nationwide scientifically valid study that reflects regional environment and seasonal changes in humidity.
 25 Any studies should also consider the different types of packaging into consideration.

1 It does not appear that any supporting data based on any nationwide scientifically valid moisture loss and
2 moisture gain studies on packaged cannabis was submitted with this proposal. Test procedures or limits on
3 moisture loss or gain which are not based on scientifically established data, that occur during current good
4 distribution practices, must be avoided as they likely violated due process (among other cases see especially
5 Cook Family Foods, Ltd. v. Voss, 781 F. Supp. 1458 (C.D. Cal. 1991)). OWM is concerned that adding the
6 proposed moisture allowances to NIST Handbook 133 without valid studies will make it difficult for the
7 states to reduce or remove them in the future, if data from field testing or later research, indicates that they
8 were either too large or too small.

- 9 • This proposal involves limits on moisture loss and moisture gain, and it is likely that two studies will be
10 required. In the past, NCWM focused on moisture loss but with this is an area where limits on moisture gain
11 will be established therefore different test conditions will need to be considered and test protocols developed.
12 Typically, desiccating products regain moisture at a slower rate than they lose moisture, but that rate depends
13 on several variables. A moisture gain study may take longer and be carried out in controlled environmental
14 conditions. Regardless both studies must encompass the typical shelf life of the packaged product. If the
15 studies are not done in a way that is scientifically valid, which represents real world conditions, and reflects
16 the typical packaging and shelf-life of products, they will NOT protect consumers or packers. They will also
17 not ensure inventory or taxes are accurately maintained. In fact, if the proposed limits are too small or too
18 large, they could impose unjustifiably higher costs on packers and those costs will be passed onto consumers.
- 19 • A modification to NIST Handbook 133 procedures will need to be submitted for consideration. Current
20 procedures are written to guide inspectors only on applying a moisture allowance when a sample has a
21 negative average error.
- 22 • Enforcement of net weight regulations where a moisture allowance is in question, requires the inspector to
23 obtain additional information on the sample and may involve seizing samples for testing and contacting the
24 packer to obtain production records for review. This is in part as to why they are sometimes treated as
25 tolerances which can facilitate fraudulent packaging practices. If an unscrupulous packer underfills packages
26 1 % when there is an overly generous 3 % moisture allowance that results in the packer’s filling practice not
27 being verified. Typically, officials will invest the time and effort into moisture loss (and here gain)
28 investigations when they receive consumer or competitor complaints. Even more frequently when a reseller
29 believes that a supplier has repeatably shipped them underweight packages. Complaints from business
30 owners will also arise when a particular shipment of expensive products and the complainant suspects,
31 unreasonably underweight packages. Inspectors also pursue these types of investigations if they suspect,
32 based on past testing, that a packer has repeatably delivered underweight packages that fall within a specified
33 moisture allowance.
- 34 • As noted above, it is important to stress that plus and minus values for moisture allowance are not tolerance
35 limits. Under this moisture allowance approach inspectors will not be able to take enforcement actions as
36 they currently do when using NIST Handbook 133. Since the 1970s weights and measures has treated
37 overweight and overfilled packages as being acceptable because overpacking is limited by the packer for
38 economic reasons. Currently inspectors do not take action on samples when the average error is positive (or
39 when a minus error falls with the Sample Error Limit). Under this proposal inspectors will not be permitted
40 to approve lots with positive average errors that fall within the 3 percent limit (for a 2 g package this 3 percent
41 value = + 60 mg). Inspectors will also not remove products from sale for being underweight within the 3
42 percent limit (– 60 mg) (unless the value is treated as a tolerance), until they take additional steps to find out
43 more about the moisture content of the cannabis, consult the packer to obtain production records, t date of
44 pack, and date of inspection. They will also determine if the packer is following current good manufacturing
45 and distribution practices, obtain other information, and then make a determination that the overfilling or
46 underfilling were reasonable or not. While this process is undertaken the packaged goods are placed under
47 a stop-sale-hold order and cannot be removed from the point of inspection until released.
- 48 • OWM recommends that the state directors be surveyed (see OWM comments on Block 3) to determine if
49 they intend to have their inspectors take enforcement action on overweight packages of cannabis. If they will
50 not implement that type of enforcement action because they doubt the public or courts would find those cases

1 justify prosecution, then the approach should probably not be added to NIST Handbook 133 and remain a
2 guidance. The importance of limiting moisture gain could be well documented and presented as meriting
3 enforcement action but any arguments would need to be persuasive. Taking enforcement action does occur
4 when overpacking is used as an unfair trade practice (states have taken action against an ice packer who puts
5 10 lb of ice in a bag and then labels it 8 lb then advertises that the 8 lb bag lasts as long as a competitor 10 lb
6 bag. The competitor sees their advertisement and complains it is unfair practice. The State inspector does
7 due diligence and performs a survey to see whether customers believe that the smaller bag does outperform
8 the larger bag.

9 In the 1950’s, it was a common concern with overweight packages because Federal tax law prohibited the
10 selling of overweight packages because the overfill deprived the government of tax revenue (which was a
11 controversy that gained a lot of attention in the 1960s and was the subject of a 1962 Congressional hearing
12 on weights and measures.) At that hearing, the State of Pennsylvania conducted a survey which revealed that
13 more than 50 percent of the packages containing smoking, chewing, and snuff that they tested were
14 underweight which cost consumers thousands of dollars each year. Similar concerns with overfilling had
15 occurred with alcohol sales but today with modern packaging and filling practices, statistical process controls,
16 and in-line checkweighers are utilized to ensure packages of these commodities meet the average and
17 individual package requirements within NIST Handbook 133. OWM has not heard of any recent cases where
18 overfilling has been an issue.

- 19 • This proposal raises another question for the Committee when there are no Maximum Allowable Variations
20 (MAV) for plus package errors. OWM recommends that the Committee study the idea of changing this
21 approach and have the MAV values apply to both positive and negative package errors when packaged
22 cannabis is being tested.
- 23 • NIST OWM encourages the Committee to consider conducting a broad long-term study in cooperation with
24 the cannabis industry to determine if the 10 percent MAV packages under 36 g is appropriate for application
25 to cannabis packages. Since cannabis is packaged on modern high precision weighing instruments and
26 variations in packaging fill that occur in current good manufacturing practice are likely to be much less than
27 they were when the 10 percent. MAV for packages under 36 g was established in the early 1970s (for a 2 g
28 package of cannabis the MAV is 200 mg) and at that time the data used was collected at both the point of
29 pack and retail stores and included data on both small packages of foods and other consumer products.
- 30 • A reference to an accepted moisture test procedure must be included in this proposal. The moisture loss
31 approach in NIST Handbook 133 anticipates that samples may need to be taken and tested if there is a
32 significant enforcement action contemplated. If an inspector repeatably finds minus package errors within
33 the 3 percent limits (for a 2 g package of cannabis this is ± 60 mg) the inspector will collect a sample and
34 compare the moisture content as found along with the moisture content at time of pack information provided
35 by the packer. If there is a dispute the inspector can share a sample with the packer for testing and the two
36 values can be intercompared to ensure the labs are in agreement. This may occur in a situation where the
37 product is consistently found to be underweight, between 1 to 3 percent, on lots that were just delivered from
38 the packer or where the inspector suspects someone is packing shortweight and claiming it is moisture loss.
39 Procedures need to be known in advance, so the state metrology laboratory has the necessary test equipment
40 and trained personnel available to perform the test promptly.
- 41 • In addition, adding a recognized moisture test procedure a detailed set of instructions for selecting and
42 handling the moisture samples will need to be provided. If an inspector seizes samples for testing, they will
43 need to follow good sampling procedures and handling practices to ensure the samples are protected and
44 stored properly prior to and after testing. If there are legal or other restrictions that apply to the seizure,
45 handling, storage, or transportation of cannabis samples then these can be included in the instructions to assist
46 the inspector.

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	B3: NET 22.1. HB133, Section 1.2.6. Deviations Caused by Moisture Loss or Gain and Section 2.3.8. Table 2-3 Moisture Allowances (correct title 9/26/21).						
	V	D	W	A	I	Opposed	Support
Submitter	X						X
OWM		X					
WWMA Annual Meeting (2021)(****)							
SWMA Annual Meeting (2021) (****)							
CWMA Interim Meeting (2021 Fall)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Interim (2021 Fall) (****)							
NEWMA Annual (2022 Spring)							
(Industry)							
NCWM L&R Committee Interim (2022)							
NCWM L&R Committee Annual (2022)							

1 **ITEM BLOCK 4 (B4) DISPENSER LABELING REQUIREMENTS**

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

6 **Source:** NCWM Fuels and Lubricants Subcommittee (FALS)

7 **Purpose:** Provide current references to CFR regulations to maintain alignment with Federal EPA regulations.

8 **B4: MOS-22.1. Section 2.20.2. Documentation for Dispenser Labeling Purposes. and 2.20.3.**
 9 **EPA Labeling Requirements.**

10 **NIST OWM COMMENT:** OWM believes the adoption of these amendments will ensure that references to Federal
 11 regulations in the method of sale of commodity regulations are updated and with accurate references. OWM
 12 recommends that this proposal be made a Voting item.

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	B4: MOS-22.1.-Section 2.20.2. Documentation for Dispenser Labeling Purposes. and 2.20.3. EPA Labeling Requirements.						
	V	D	W	A	I	Opposed	Support
Submitter	X						X
OWM	X						
WWMA Annual Meeting (2021) (****)							
SWMA Annual Meeting (2021) (****)							
CWMA Interim Meeting (2021 Fall)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Interim (2021 Fall) (****)							
NEWMA Annual (2022 Spring)							

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	B4: MOS-22.1.-Section 2.20.2. Documentation for Dispenser Labeling Purposes. and 2.20.3. EPA Labeling Requirements.						
	V	D	W	A	I	Opposed	Support
(Industry)							
NCWM L&R Committee Interim (2022)							
NCWM L&R Committee Annual (2022)							

1 **B4: FAL-22.1 Sections 2.1.2. Gasoline-Ethanol Blends., 2.20.3. EPA Labeling**
 2 **Requirements., 3.2.5. Documentation for Dispenser Labeling Purposes, and**
 3 **3.2.6. EPA Labeling Requirements.**

4 **NIST OWM COMMENT:**

5 *Note:* The language within the Item under Consideration on B4: FALS-22.1 should read “Amend NIST Handbook
 6 130, Uniform Fuels and Automotive Lubricants Regulation.

7 OWM believes the adoption of these amendments will ensure that references to Federal regulations in the method of
 8 sale of commodity regulations will provide readers with updated and accurate references. OWM recommends that
 9 Block 4 be a Voting item.

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	B4: FALS 22.1 - Sections 2.1.2. Gasoline-Ethanol Blends., 2.20.3. EPA Labeling Requirements., 3.2.5. Documentation for Dispenser Labeling Purposes, and 3.2.6. EPA Labeling Requirements						
	V	D	W	A	I	Opposed	Support
Submitter	X						X
OWM	X						
WWMA Annual Meeting (2021) (****)							
SWMA Annual Meeting (2021) (****)							
CWMA Interim Meeting (2021 Fall)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Interim (2021 Fall) (****)							
NEWMA Annual (2022 Spring)							
(Industry)							
NCWM L&R Committee Interim (2022)							
NCWM L&R Committee Annual (2022)							

1 **FLR - UNIFORM FUELS AND AUTOMOTIVE LUBRICANTS REGULATION**

2 **FLR-20.5 I Section 2.1.2.(a). Gasoline-Ethanol Blends.**

3 **Source:** American Petroleum Institute (API)

4 **Purpose:** More comprehensively align NIST Handbook 130 Uniform Fuels and Automotive Lubricants Regulations
5 with the U.S. EPA’s rule that grants a 1 psi vapor pressure waiver to E15 for summertime (June 1 to September 15)
6 and to help ensure consumers receive a consistent E15 blend. The proposed changes to NIST Handbook 130 reflect
7 the important information that an inspector will need to ensure that E15 is properly blended and that the potential harm
8 to the consumer and the environment will be minimized.

9 **NIST OWM COMMENT:** No comment. This is an Informational Item pending its review of the July 2, 2021,
10 decision by the U.S. Court of Appeals on EPA’s 2019 rule on fuels containing ethanol.

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	FLR-20.5 Section 2.1.2.(a) Gasoline – Ethanol Blends.						
	V	D	W	A	I	Opposed	Support
Submitter					X		
NCWM Annual Meeting 2021					X		
OWM					X		
WWMA Annual Meeting (2021)							
NEWMA Interim (2021 Fall)							
SWMA Annual Meeting (2021)							
CWMA Interim Meeting (2021 Fall)							
NCWM L&R Committee Interim (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual (2022 Spring)							
(Industry)							
NCWM L&R Committee Annual (2022)							

11

1 **ITEM BLOCK 6 (B6) TRANSMISSION FLUID**

2 **B6: MOS-21.1. A Section 2.36.2. Labeling and Identification of Transmission Fluid**

3 **B6: FLR-21.2. A Section 3.14.1. Labeling and Identification of Transmission Fluid**

4 **Source:** Missouri Department of Agriculture

5 **Purpose:** Protect consumers by providing a cautionary statement of package labels of obsolete transmission fluids.

6 **NIST OWM COMMENT:** OWM supports the development of this Blocked item through FALS.

7 As noted in the proposal there are limits to how much information can fit into the area of the principal display panel
 8 and minimum type size and free area requirements in the UPLR combined must be considered. Allowing graphic
 9 designers flexibility would achieve the goal of this regulation and may result in a caution label that conveys the
 10 importance of the information in a far more impactful way than a lengthy warning statement may convey. Being too
 11 restrictive in in developing label requirements and on mandatory language can raise commercial free speech issues so
 12 the more flexibility allowed (while still achieving the intent of the regulation) the better. Users of packaged petroleum
 13 products are already familiar with API’s symbols for certification or the service application donut and have learned
 14 that these symbols contain important information so this approach could reduce the potential problems in complying
 15 with the requirements for the principal display panel. See example: [Layout 1 \(api.org\)](#)

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	B6: MOS-21.1 Section 2.36.2. Labeling and Identification of Transmission Fluid						
	V	D	W	A	I	Opposed	Support
Submitter	X						X
NCWM Interim Meeting (2021)				A			
NCWM Annual Meeting 2021				A			
OWM							
WWMA Annual Meeting (2021)							
NEWMA Interim (2021 Fall)							
SWMA Annual Meeting (2021)							
CWMA Interim Meeting (2021 Fall)							
NCWM L&R Committee Interim (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual (2022 Spring)							
(Industry)							
NCWM L&R Committee Annual (2022)							

1 **OTH – OTHER ITEMS**

2 **OTH-22.1 D Uniform Regulation for E-commerce Products**

3 This item was submitted for development by the Packaging and Labeling Subcommittee (PALS) of the NCWM Laws
4 and Regulations Committee.

5 **Source:** NCWM Packaging and Labeling Subcommittee (PALS)

6 **Purpose:** Provide an update of the activities of PALS which works on direction from and reports to the L&R. This is
7 to propose a new regulation for NIST Handbook 130 covering websites and products which are sold through e-
8 commerce.

9 **NIST OWM COMMENTS:** OWM supports the development of this item.

10 OWM recommends that the Committee request that PALS develop a strategy to reach out to other stakeholders. OWM
11 recommends that the following organizations and others be invited to participate in the development of this proposed
12 regulation:

- 13 ○ Federal Agencies (especially FTC and FDA)
- 14 ○ Major E-commerce retailers (Amazon, Etsy, Walmart, Target, Home Depot).
- 15 ○ Smaller E-commerce retailers (eBay)
- 16 ○ Trade Associations (Consumers Brands Association, Food Industry Association, National Retail Federation,
17 Retail Industry Leaders Association (RILA))
- 18 ○ Consumer Groups (Consumer Reports, National Consumers League)

19 OWM would be able to publish a Federal Register Notice (FRN) requesting comments about the proposed rule for the
20 NCWM. OWM will assist PALS in these outreach efforts upon request.

- 21 • OWM recommends that the Committee consider a broader definition of Section 2.12. E-commerce be
22 considered. The definition should be revised to states “**any commodity offered or exposed for sale by**
23 **weight, measure or count from bulk or in packaged form.**” Otherwise, the regulation may be removing
24 hundreds, if not thousands, of products from the regulation. OWM believes the revised language will help
25 clarify the regulation and make it easier for inspectors and website operators to understand.
- 26 • OWM recommends that the Committee consider the following amendments to Section 5. “Unit Pricing
27 Requirements for Products Offered for Sale on an E-Commerce Site.

28 **Section 5. Unit Pricing Requirements for Products Offered for Sale on an E-commerce Site**

29 **5.1. Unit Pricing for E-commerce Products – A unit price is required for bulk and random weight**
30 **products offered for sale on e-commerce sites. Unit Price information for standard packages offered**
31 **for e-commerce is optional. When providing required or optional unit pricing information, the**
32 **following requirements apply:**

33 **5.1.1. The unit price must be consistent with the required method of sale for the product.**

34 **(a) Units of Measure. - The declaration of the unit price of a particular commodity in all**
35 **package sizes offered for sale in a retail establishment shall be uniformly and consistently**
36 **expressed in terms of:**

- 1 (1) Price per kilogram or 100 g, or price per pound or ounce, if the net quantity of
2 contents of the commodity is in terms of weight.
- 3 (2) Price per liter or 100 mL, or price per dry quart or dry pint, if the net quantity of
4 contents of the commodity is in terms of dry measure or volume.
- 5 (3) Price per liter or 100 mL, or price per gallon, quart, pint, or fluid ounce, if the net
6 quantity of contents of the commodity is in terms of liquid volume.
- 7 (4) Price per individual unit or multiple units if the net quantity of contents of the
8 commodity is in terms of count.
- 9 (5) Price per square meter, square decimeter, or square centimeter, or price per square
10 yard, square foot, or square inch, if the net quantity of contents of the commodity is
11 in terms of area.

12 **(b) Exemptions**

- 13 (1) Small Packages. – Commodities shall be exempt from these provisions when packaged
14 in quantities of less than 28 g (1 oz) or 29 mL (1 fl oz) or when the total retail price is
15 50 cents or less.
- 16 (2) Single Items. – Commodities shall be exempt from these provisions when only one
17 brand in only one size is offered for sale in a particular retail establishment.
- 18 (3) Infant Formula. – For “infant formula,” unit price information may be based on the
19 reconstituted volume. “Infant formula” means a food that is represented for special
20 dietary use solely as a food for infants by reason of its simulation of human milk or
21 suitability as a complete or partial substitute for human milk.
- 22 (4) Variety and Combination Packages. – Variety and Combination Packages as defined
23 in Section 2.9 and Section 2.10 in the Uniform Packaging and Labeling Regulation
24 [Section XX NOTE] shall be exempt from these provisions.

25 *Section XX NOTE: See “Uniform Packaging and Labeling Regulation*

26 **5.1.2. The unit price must be in consistent units for similar products. For unit pricing to facilitate**
27 **effective consumer cost comparison, similar products must be unit priced in the same manner (unit**
28 **of measure). If different brands or package sizes of the same consumer commodity are expressed**
29 **in more than one unit of measures, the e-commerce site must unit price the items consistently. For**
30 **example, some juices may be labeled by the fluid ounce, pint, quart and gallon. Unit pricing**
31 **similar liquid products by the fluid ounce, others by the pint and still others by the gallon does not**
32 **facilitate value comparison. E-commerce sites must determine the most effective units for ensuring**
33 **value comparison of similar products with varying product sizes.**

34 **5.1.3. When unit pricing, the e-commerce site must be to the nearest cent when a dollar or more.**
35 **If the unit price is under a dollar, it must be listed to the tenth of a cent or the whole cent, but both**
36 **methods cannot be used simultaneously. The e-commerce site must accurately and consistently**
37 **use the same method of rounding up or down to compute the unit price to the whole cent.**

38 **5.1.4. The unit price information must be presented adjacent to the product price**
39 **information. When present, unit price information is to be provided in a manner so that it is**
40 **adjacent to all other product pricing information.**

- 1 • OWM recommends that PALS consider developing a presentation which illustrates how to apply the
2 requirements to a mockup of different ecommerce websites. Which should include graphical illustrations in
3 showing how the requirements are applied. This would assist readers to understand this proposal as it moves
4 forward for adoption. Later these graphics could be used as a training webinar to assist weights and measures
5 administrators and inspectors as to how to implement an enforcement program. The presentation could also
6 be modified for use as an educational webinar for designers and developers of ecommerce websites.

- 7 • OWM supports the PALS proposal to develop a “best practices” guide for web designers and developers.

- 8 • OWM also recommends PALS develop an Examination Procedure Outline (EPO) similar to the EPO for
9 Price Verification. This would provide administrators and inspectors with detailed guidance on application
10 of the regulation. This would allow for illustrations and examples of acceptable presentations and formats
11 of required information. It may be worthwhile for States to start performing mock inspections of specific
12 types of websites during the development of the regulation. This would allow for both the regulation and
13 EPO to be developed simultaneously, and lessons learned in the mock inspections can be used to refine the
14 regulation and answers any questions that arise. The primary reason for this proposal is to provide the states
15 with a regulation that can be uniformly enforced across all websites. It is essential to provide uniformity so
16 that you do not have a website owner told by one state to present information in a specific fashion, only to
17 have a different state (or even the same state) reject the website.

- 18 • OWM recommends that PALS develop a proposed amendment to Section 12 “Powers and Duties of the
19 Director” in the Uniform Weights and Measures Law to authorize the Director to adopt regulations that
20 encompass the various aspects necessary to ensure ecommerce websites and other regulated sales outlets
21 comply with legal metrology requirements.

Organization (*) not submitted (**) no meeting (***) no recommendation (****) Only new and voting items discussed	OTH-22.1 - Uniform Regulation for Ecommerce Products						
	V	D	W	A	I	Opposed	Support
Submitter - PALS		X					X
OWM		X					
WWMA Annual Meeting (2021)							
NEWMA Interim (2021 Fall)							
SWMA Annual Meeting (2021)							
CWMA Interim Meeting (2021 Fall)							
NCWM L&R Committee Interim (2022)							
CWMA Annual Meeting (2022 Spring)							
NEWMA Annual (2022 Spring)							
(Industry)							
NCWM L&R Committee Annual (2022)							

1 **OTH-07.1 Fuels and Lubricants Subcommittee**

2 **Source:** NCWM Fuels and Lubricants Subcommittee (FALS)

3 **Purpose:** Provide an update of the activities of this Subcommittee which works on direction from and reports to the
4 L&R Committee. The mission of FALS is to assist the L&R Committee in the development of agenda items that affect
5 NIST Handbook 130, Uniform Fuels and Automotive Lubricants Inspection Law and Uniform Fuels and Automotive
6 Lubricants Regulation. The Subcommittee consists of regulators and associate members who have subject matter
7 expertise in fuels and lubricants. The Subcommittee will be called upon to aid in the development, provide guidance,
8 and help establish NCWM position on items concerning fuels and lubricants.

9 **NIST OWM COMMENT:** OWM will continue to provide technical advice and assistance to FALS and participate
10 in its activities.

11 **OTH-11.1 Packaging and Labeling Subcommittee**

12 **Source:** NCWM Packaging and Labeling Subcommittee (PALS)

13 **Purpose:** Provide an update of the activities of this Subcommittee which reports to the L&R Committee. The mission
14 of PALS is to assist the L&R Committee in the development of agenda item, NCWM positions and new standards
15 related to packaging and labeling. The Subcommittee will also be called upon to provide important and much needed
16 guidance to the regulatory and consumer packaging communities on difficult questions. PALS will report to NCWM
17 L&R Committee. The Subcommittee is comprised of a Chair, eight voting members, and anyone interested in
18 packaging and labeling standards.

19 **NIST OWM COMMENT:** OWM will continue to provide technical advice and assistance to PALS and participate
20 in its activities.