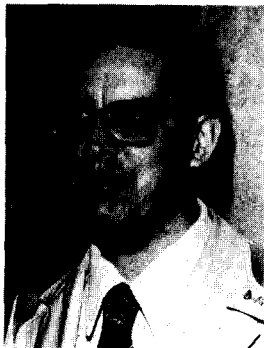


REPORT BY THE
SPECIAL STUDY GROUP ON ENFORCEMENT UNIFORMITY

Introduction by KENDRICK J. SIMILA
Administrator, Weights and Measures Division,
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It is my pleasure this morning to report to you as co-chairman, together with Chip Kloos of Hunt-Wesson Foods, on the activities to date of the NCWM Special Study Group on Enforcement Uniformity.

One of the fundamental objectives of the National Conference on Weights and Measures is to encourage and promote uniformity of requirements and practices among jurisdictions. The NCWM has achieved considerable success in developing and seeing through to their adoption, various model State laws and regulations used in the enforcement of measurement standards requirements by the States, counties, cities, and territories. It is apparent, however, that the enforcement practices and procedures actually employed by the different jurisdictions has significantly affected the actual level of uniformity achieved in the field.

Concern about the long term implications of non-uniformity in weights and measures enforcement at the State and local level led to the appointment during the past year of this special Study Group by the Conference Chairman, Charles Vincent. The study group, consisting of four weights and measures officials and four members from industry, first met during the NCWM interim meetings of the Conference standing committees last January.

The identified goal or purpose of the Study Group is to achieve a high degree of uniformity in weights and measures enforcement policies and practices. In recognition of the extremely wide range of measurement standards responsibilities that weights and measures jurisdictions have throughout the U.S., the initial scope of the Study Group's efforts was deliberately limited to issues involving enforcement practices pertaining to packaged products. It was felt that the Group's involvement in other areas where weights and measures uniformity of enforcement is an issue may be appropriate or desirable, but only after the issue of uniform package control has been adequately addressed.

The Study Group determined three fundamental objectives that, when satisfied, would contribute toward meeting its goal. These objectives are:

1. To identify the net content enforcement practices of the States and principal local jurisdictions.
2. To identify the degree of consistency or uniformity in the enforcement practices among these jurisdictions.
3. To recommend to the National Conference on Weights and Measures through the Committee on National Measurement Policy and Coordination, ways and means of increasing the degree of uniformity among the various jurisdictions.

The approach taken toward fulfilling objectives one and two was to develop and send to all the State-level and to 16 of the principal local weights and measures jurisdictions a questionnaire about their package enforcement programs. Analysis of the information received from these jurisdictions will serve as a basis for developing recommendations to fulfill the third objective.

Prior to the 65th National Conference in June, 1980, 94 percent (50 of 53) of the State-level weights and measures jurisdictions and 60 percent (9 of 15) of the local jurisdictions responded to the Study Group's four-page Enforcement Policy and Practice Questionnaire. This was a very encouraging overall response of 87 percent (59 of 68).

Here to report on the tabulation of the questionnaire responses to date, and to describe the preliminary results is Chip Kloos, Study Group Co-Chairman, from Hunt-Wesson Foods.

PRELIMINARY REPORT ON RESPONSES TO ENFORCEMENT
UNIFORMITY QUESTIONNAIRE

Presented by CHIP KLOOS, Section Head,
Research and Development
Hunt-Wesson Foods, Inc.



Thank you Ken and members of the Conference.

The questionnaire developed by the Study Group was designed to collect information about the net-content, package-inspection programs utilized by weights and measures officials. The questions were divided into four areas which included: 1) Identification of the net-content compliance standards utilized by each jurisdiction. 2) How these standards are interpreted and applied 3) Action taken when evidence of low-net content is found. 4) Frequency of enforcement options utilized.

The preliminary results consist of a summary of the responses to each question and are shown in tables bearing the question number. In general, the results indicate that although there is a reasonably high degree of uniformity with regard to established package-compliance standards, there is a significant amount of variation in how these standards are interpreted and implemented. By standards, we mean official net-content compliance requirements and not physical-test standards.

The first question asked "What are the package net-content standards of your State or jurisdiction?". The responses are shown in table 1A. Fifty-six of the 59 respondents answered this question. Upon close examination of the "other standards" submitted as copies to the Study Group, we found that several included the provisions contained in the National Bureau of Standards

Table 1A. Net-content standards.

<u>Standards Used</u>	<u>Number Responding</u>
1. NBS Handbook 67 only	30
2. Other standards	16
3. Combination of both HB 67 and other standards	10
Total	<u>56</u>

Handbook 67. In fact, overall, 49 of the 56 or 88 percent of those responding utilized the provision of Handbook 67.

Table 1B summarizes the responses to the question "How were these standards adopted?". Fourteen respondents indicated that more than one method was used to adopt the standards. Over 70 percent indicated that the standards received official legal recognition by nature of the fact that legislative acts or administrative rule were utilized to adopt them.

Table 1B. How were standards adopted?

<u>Method of Adoption</u>	<u>Number</u>
Legislative act	35
Administrative rule	15
Local ordinance	5
Policy decision	13

Table 1C summarizes the responses to the question "Are the State package net-content standards uniformly enforced throughout your jurisdiction?". As one would expect, there was a high degree of implied uniformity. However, the responses of the States usually excluded reference to large metropolitan jurisdictions within the State where separate weights and measures offices exist or where Federal jurisdictions such as the USDA or FDA were involved. Most States strive for uniformity but recognize that deviations exist.

Table 1C. Are standards enforced uniformly throughout jurisdiction?

<u>Response</u>	<u>Number Responding</u>
Yes	54
No	4
Total	<u>58</u>

Table 1D shows the responses to the question "If local net-content standards are enforced, do they conform to the State standards?". For those States where no local standards exist or where specific knowledge of the local standards is lacking, the response "not applicable" was used. We also recognize that some local jurisdictions may conform to the State standards but may also go beyond them by enforcing more rigorous standards.

Table 1D. Do local standards conform to state standards?

<u>Response</u>	<u>Number Responding</u>
Yes	33
No	0
Not applicable	26
	59
	Total

Table 2A-C summarizes the responses to the questions concerning the amount (percent) of the total weights and measures activity devoted to net-content enforcement of standard packages. The question asked first identified the percent of the total weights and measures activity devoted to package-control programs. Then, what percent of the package-control activity was devoted to standard-package programs? Finally, what percent of the standard-package programs was devoted to net-content enforcement? By multiplying these three percentages together, we inferred for each respondent what percent of their total activity was devoted to the net-content enforcement of standard packages. The results indicate that the average portion of all weights and measures activities spent on this effort is approximately six percent. We recognize that this may be a rough estimate and that the range of individual responses varied from less than one percent to over 40 percent.

The next four questions were designed to identify how the standards are interpreted and applied. Table 2D summarizes the responses to the question "If a group of 34 packages on a shelf has two different date codes, one with nine containers, the other with 25 containers, how would you choose the items for an inspection sample?". This question was intended to see whether an inspection lot at retail is composed of a single-date code or a composite of date codes. Eighty-six percent of the respondents indicated they would draw two separate samples, one from each date code.

Table 3A shows the responses to the question "What is your lot acceptance/rejection criterion based on?". The results indicate that 80 percent of the respondents utilize both the sample average and individual errors as the basis, while 10 percent utilize only one criterion.

Table 2A-C. Percent of activity devoted to package control programs.

Activity	Average Percent	Number responding by percentage class					Number Responses	
		0%-9%	10%-19%	20%-29%	30%-39%	40%-49%		50% +
A. Percent of total activity devoted to package control programs	32	4	8	19	7	9	11	58
B. Percent of package control activity devoted to std. package programs	30	11	17	8	2	3	17	58
C. Percent of std. package programs devoted to net-content enforcement	46	12	7	7	3	1	27	57

Activity	Average Percent	Number responding by percentage class					No. Resp.
		Less than 1%	1%-3%	4%-7%	8%-10%	More than 10%	
Percent of total activity devoted to net-content enforcement of std. packages	6	22	12	6	5	12	57

Table 2D. How would an inspection sample be chosen?

<u>Response</u>	<u>Number Responding</u>
Draw one inspection sample combining both date codes	8
Draw two inspection samples, one from each date code	50
	<u>58</u>

Table 3A. Lot acceptance/rejection criteria.

<u>Response</u>	<u>Number Responding</u>
Sample average only	4
Individual unreasonable errors only	1
Both sample average and unreasonable individual errors	40
Other bases	5
Total	<u>50</u>

The information in table 3B summarizes the responses to the question "If an inspection sample of packages with a declared net weight of 12 oz has an average net weight of 12.05 oz but two of the containers have a net weight of 11.65 oz, what would you conclude about the lot?". The objective of this question was to see how a sample with an acceptable average net weight and two unreasonable individual minus errors (underfills) would be considered. It is interesting to note that in table 3A, 82 percent indicated that unreasonable individual errors were used as a basis for lot acceptance (rejection). However, in this table (table 3B), 34 percent indicated they would pass the lot and only 34 percent indicated they would fail the lot even though there was an excessive number of unreasonable individual errors in the inspection sample.

Table 3C summarizes the responses to the question "If an inspection sample of 12-oz containers has an average net weight of 11.98 oz, what would you conclude about the lot sampled?". The objective of this question was to see how a sample with a low average net weight would be considered. Table 3A indicated that 88 percent used the sample average as a basis for lot acceptance/

rejection but only 59 percent of the responses to this question noted that they would fail the lot.

Table 3B. Action taken if an excessive number of unreasonable underfills are found in an inspection sample.

<u>Response</u>	<u>Number Responding</u>
Pass lot	20
Take more samples	8
Mark underfills off-sale	1
Fail lot	20
None of the above	10
Total	59

Table 3C. Action taken if a low average net weight is found in an inspection sample.

<u>Response</u>	<u>Number Responding</u>
Pass lot	9
Take more samples	3
Mark underfills in sample off-sale	2
Fail lot	35
None of the above	10
Total	59

Tables 3B and 3C highlight the fact that the lack of uniformity is greatest in the interpretation and application of the standards and not in the standards themselves.

The responses to question 4A, which sought to identify under what conditions various enforcement options would be exercised, are not included here for the sake of brevity.

Table 4B highlights the frequency with which the various enforcement options are utilized. For the purpose of clarification an assurance of voluntary compliance plea is a consent order, one that states that from now on, we will comply; civil penalties involve no criminal implications; prosecution implies criminal intent, and an

injunction is a court order. We see that marking containers off-sale and warnings are used most frequently and that injunctions and civil penalties are used the least.

Table 4B. Frequency of enforcement options utilized.

<u>Option</u>	<u>Number Responding</u>		
	<u>Never</u>	<u>Sometimes</u>	<u>Always</u>
1. Marking containers off sale	0	21	36
2. Warnings	0	26	31
3. Assurance of voluntary compliance plea	11	24	17
4. Administrative hearings	19	31	4
5. Civil penalties	27	23	1
6. Injunction	23	27	0
7. Prosecution	5	49	1
8. Other	5	8	0

Table 4C summarizes the responses to the question "If an inspection sample fails your enforcement requirements, would you take a second sample to confirm your findings before taking legal action?". Eighty-six percent of those responding indicated that a second confirmation sample would be taken. This implies that many officials use a screening approach where the initial sample is used to identify potential lots in violation and the second sample is used to confirm the findings.

Table 4C. If sample fails compliance standard, would a second confirmation sample be taken before taking legal action?

<u>Response</u>	<u>Number Responding</u>
Yes	51
No	8
	<hr/>
Total	59

The preliminary results of our survey summarized in the ten preceding tables indicate that uniform standards would be helpful in insuring uniform-compliance practices but will not guarantee such practices. Attention must be focused on training of officials and their understanding of these standards. Further recognition must be given to the political pressures of the job, attitude of the officials, and other factors affecting motivation, before any real uniformity in practice can be achieved.

Efforts will be made after this Conference to obtain responses to the questionnaire from the nine jurisdictions that did not send in replies as of June, 1980. In the coming weeks, the Study Group will further analyze the data from the questionnaires to identify specifically what enforcement policies and practices contribute most to problems of uniformity and consistency in package net-contents control. From this analysis, the group intends to develop its recommendations to the P&C Committee for ways and means of increasing the degree of uniformity among the various jurisdictions.

The Special Study Group intends to draft its final report at the Western Weights and Measures Conference in Juneau, Alaska, during the week of September 8 and to present the final report to the P&C Committee in ample time for consideration at the next interim committee meeting in Washington in January, 1981.

The Study Group on Enforcement Uniformity has also been approached concerning the possibility of expanding its study activity to cover other areas of weights and measures enforcement. Specifically, the Study Group will be exploring the feasibility of becoming involved in further consideration of the issue of a national metrological control program for the United States and in participating in or assisting with the NBS-sponsored study of the Bureau's programs of assistance to State and local weights and measures authorities.