

Agenda of the Laws and Regulations Committee

Dennis Johannes
Chairman
California Weights and Measures

Reference
Key Number

200 Introduction

The Laws and Regulations Committee (Committee) will address the following items at its Interim Meeting. Table A identifies agenda items by Reference Key Number, title, and page number. The first three digits of the Reference Key Numbers of the items are assigned from the subject series listed below. The fact that an item may appear on the agenda does not mean it will be presented to the NCWM for a vote, The Committee may withdraw some items, present some items for information and further study, issue interpretations, or make specific recommendations for changes to the publications listed below. The recommendations presented in this agenda are statements of proposal and not necessarily recommendations of the Committee. The appendices to the report are listed in Table B.

This agenda contains recommendations to amend National Institute of Standards and Technology (NIST) Handbook 130, "Uniform Laws and Regulations," 2003 edition, and NIST Handbook 133, "Checking the Net Contents of Packaged Goods," Fourth Edition. Revisions proposed for the handbooks are shown in **bold face print** by ~~crossing out~~ information to be deleted and underlining information to be added. Additions proposed for the handbooks are designated as such and are shown in **bold face print**. Proposals presented for information only are designated as such and are shown in *italic type*. "SI" means the International System of Units. "FPLA" means the Fair Packaging and Labeling Act. The section mark, "\$," is used in most references in the text and is followed by the section number and title, (for example, § 1.2. Weight.) When used in this report, the term "weight" means "mass."

Subject Series

NIST Handbook 130 - General	210 Series
Uniform Laws	220 Series
Weights and Measures Law (WML)	221 Series
Weighmaster Law (WL)	222 Series
Engine Fuels, Petroleum Products, and Automotive Lubricants Inspection Law (EFL)	223 Series
Uniform Regulations	230 Series
Packaging and Labeling Regulation (PLR)	231 Series
Method of Sale Regulation (MSR)	232 Series
Unit Pricing Regulation (UPR)	233 Series
Voluntary Registration Regulation (VRR)	234 Series
Open Dating Regulation (ODR)	235 Series
Uniform National Type Evaluation Regulation (UNTER)	236 Series
Engine Fuels, Petroleum Products, and Automotive Lubricants Regulation (EFR)	237 Series
Examination Procedure for Price Verification	240 Series
Interpretations and Guidelines	250 Series
NIST Handbook 133	260 Series
Other Items	270 Series

CURRENT PROPOSAL: Amend Handbook 133 § 3.2 Gravimetric Test Procedure for Liquids as follows:

3. ~~For milk, select a volumetric measure equal to the label declaration. For all other products, s~~Select a volumetric measure that is one size smaller than the label declaration. For example, if testing a 1 L bottle of juice or soft drink, select a 500mL volumetric measure.

BACKGROUND AND JUSTIFICATION: Currently, Handbook 133 can be interpreted to state that you must use a volumetric measure equal to the label declaration when testing milk. The previous 3rd Edition Section 4.7. allowed for the use of a smaller sized measure. Milk should not be excluded from all other products. This proposal would allow the jurisdictions to continue to use the same measure so they would not be required to purchase new equipment.

HISTORY OF ITEM: This is a new item. First introduced at the 2003 CWMA Interim Meeting, CWMA recommended adoption of this item.

260-6 Amend § 3.11 and MAV Table 2-10

SOURCE: Western Weights and Measures Association (WWMA)

CURRENT PROPOSAL: Amend the application and header of Handbook 133 Table 2-10 as follows to allow the MAVs that apply to Mulch and Soil to also apply to similar products, such as Wood Shavings and Animal Bedding:

Table 2-10. Exceptions to the Maximum Allowable Variations for
Textiles, Polyethylene Sheeting and Film, Mulch ~~and~~, Soil, and Other Similar Products Labeled by Volume,
Packaged Firewood, and
Packages Labeled by Count with Less than 50 Items

Amend Handbook 133 § 3.11 to read:

3.11. Mulch ~~and~~, Soil, and Other Similar Products Labeled by Volume

BACKGROUND AND JUSTIFICATION: A manufacturer of wood fiber products feels that their wood shavings, labeled by volume, should receive the same MAVs as "Mulch and Soils." The product could conceivably be used in as many different applications as "Animal Bedding," "Insulation," "Mulch" (A Horticultural Above Ground Dressing), etc. The reasons for allowing expanded MAVs for Mulch and Soil also apply to other similar products. Item 250-10, which was adopted at the 83rd National Conference on Weights and Measures in 1998, and was entitled "Bark Mulch, and Other Organic Products – Maximum Allowable Variations" discussed the reasoning and the necessity for the expanded MAVs. This reasoning also applies to other similar products with irregular particle sizes and shapes, and that have poor measurement repeatability because of inherent product characteristics.

HISTORY OF ITEM: This is a new item. First introduced at the 2003 WWMA Meeting, WWMA recommended adoption of this item. The SWMA recommended that this item be withdrawn because there was insufficient data provided to justify further consideration.

270 OTHER ITEMS

270-1 Enhanced Product – USDA/FSIS Meat and Poultry Products

SOURCE: Central Weights and Measures Association (CWMA)

CURRENT PROPOSAL: The NCWM shall:

- (1) Establish a Working Group to study current market conditions for enhanced versus non-enhanced meat and poultry products, to determine the extent to which water and/or other added solutions are no longer retained in the product at the time of sale (i.e., are lost into the packaging material or are otherwise free-flowing) recognizing Federal regulations that are in place which govern labeling of such products; and

- (2) Direct the Working Group to make recommendations to the L&R Committee based on findings of the study concerning what is to be considered "reasonable moisture allowances" when conducting Handbook 133 inspections of enhanced meat and poultry products.

BACKGROUND AND JUSTIFICATION: Meat and poultry processors have been marketing fresh meat and poultry items to which water-based solutions of various compositions have been added, ostensibly with the claim that the solutions "enhance juiciness and/or flavor" and overall palatability. Wet tare testing in the State of Michigan has revealed that those solutions leach into the soaker pads and packaging material and are no longer contained in the product at the time of sale. Thus, they do not accomplish the stated purpose. This means that consumers are paying for water solutions: (1) at fresh meat and poultry prices, and (2) that are no longer part of the product. This causes economic harm to consumers and the marketplace.

In addition, fresh poultry has been processed for decades using a bath chilling method which causes the carcasses to uptake water to the extent that the USDA/FSIS has placed percentage limits on the amount of additional water the poultry is allowed to absorb (8 % whole/12 % cut up). Labeling on "enhanced products" that has been allowed by the USDA/FSIS ranges from "contains up to 33 % of a solution" to "up to 33 % of product weight is added ingredients." This labeling appears to be ineffective at best, and misleading at worst.

Dry and/or dry-used tare testing of these products cannot:

- (1) detect the levels of solutions claimed on packaging.
- (2) detect to what extent the artificially added moisture has leached from the products and has been either absorbed in soaker pads, or remains free-flowing in the packaging material.
- (3) yield data with which to determine "reasonable variations" from the stated net weight.

Recent laboratory tests on fresh, "enhanced" poultry products sold in the State of Michigan have revealed moisture losses ranging from 2 to 6.5 ounces.

USDA estimates indicate that with respect to chilled poultry, in 1996 consumers paid for 1.5 billion pounds of retained water at a cost of nearly \$1 billion. (USDA/FSIS, Retained Water in Raw Meat and Poultry Products; Poultry Chilling Performance Standards, Docket #97-054P, September 8, 1998, p. 48974.) Poultry with a processed water uptake of up to 8 % (whole) or 12 % (cut up) of net weight is being sold "enhanced with up to a 15 % of a solution," resulting in a product for which a consumer is paying for 23 % water.

The initial thrust of the USDA/FSIS proposed rulemaking was to accommodate legitimate water uptake claims on the basis of meeting food safety requirements. However, comments have been submitted that seriously challenge the poultry industry's assertion that batch chillers are the preferred, best method to chill carcasses to enhance food safety. On the contrary, according to several scientific submissions to the proposed rulemakers, bath chillers may actually perpetuate and facilitate the spread of pathogens. The USDA/FSIS also found that several poultry packers are "targeting" the upper water retention limits, regardless of any food safety concerns.

Current labeling of products for added solutions is extremely vague and potentially misleading to consumers. Consumers' economic interests are not being protected without changes to the inspection system requirements. The consuming public has not been fully informed of the economic impact of paying meat and poultry prices for water. This will eventually surface in the media, however, and weights and measures officials must be able to address the "reasonableness" of this practice.

HISTORY OF ITEM: This item was originally brought to the Committee by the CWMA in 2000. At that time the CWMA was recommending that the Committee:

- A. In concert with the NCWM Administration and Public Affairs Committee, provide an opportunity for a Technical Demonstration at the NCWM 2001 Interim Meeting in Phoenix, Arizona, on the economic impact on U.S. consumers due to moisture loss from fresh meat and poultry products that have been "enhanced" through the addition of "solutions" (water, sodium phosphate, etc.) or have otherwise gained moisture during processing (i.e., fresh poultry). It is requested that the Technical Demonstration, to be presented on behalf of the CWMA by the State of Michigan, be conducted during a joint session of the NCWM Standing Committees due to the nationwide scope and economic impact of this issue; and

- B. Establish a Working Group to begin a study, on a nationwide basis, if possible, to determine the extent to which consumers in the U.S. are paying for water and/or other added solutions that are no longer retained in the product at the time of sale (i.e., are lost into the packing material or are otherwise free-flowing); and
- C. Direct that the Working Group recommend a testing method that may be utilized by weights and measures jurisdictions to determine the amount and/or reasonableness of the moisture loss documented and what "gray area," if any, should be applied to these products; and
- D. Direct the Working Group to examine labeling of "enhanced" fresh meat and poultry (including fresh poultry that has gained weight due to water absorption as a result of processing) to determine if current labeling is sufficiently descriptive and uniform to allow U.S. consumers to make informed purchasing decisions and to recommend changes if the labeling is found to be non-uniform and/or otherwise deficient.

The CWMA requested that this item be given a high priority by the NCWM, and that the goal be for the Working Group to report on its findings during the 2001 NCWM Annual Meeting Technical Session.

In 2001: At the January Interim Meeting the Committee commented that it is difficult for weights and measures officials to conduct net content inspection in accordance with NIST Handbook 133 procedures without defined reasonable moisture allowances. The Committee therefore recommended that the NCWM establish a Working Group to study current market conditions and recommend moisture allowances (the current proposal). At the July Annual Meeting this item was adopted by the NCWM.

- The CWMA formed a small committee to develop recommendations for the formation of the working group with the goal of providing those recommendations to the NCWM Chairman and the NCWM Laws and Regulations Committee Chairman in advance of the 2002 NCWM Interim Meeting. Henry Oppermann, Chief, NIST Office of Weights and Measures, provided copies of a previous NCWM Study Group protocol to assist in the development of this item.
- The WWMA recommended that the Enhanced Product Working Group propose a plan and scope of action for consideration by the NCWM. The WWMA encouraged the working group to invite participants from USDA, industry, and other interested parties.
- The SWMA echoed the WWMA's recommendation that USDA, industry, and other interested parties be invited to participate in the working group.

In 2002: The Committee voted to maintain this item on the agenda as Informational pending the proposed formation of an Enhanced Product Working Group by the NCWM Board of Directors.

- The CWMA reported that data collected by their committee had been forwarded to Kurt Floren, San Diego County, California, who they had been told had been appointed to lead this effort.
- The WWMA recommended that this item remain Informational to give the NCWM Board of Directors time to determine the appropriate direction regarding this item.

In 2003: The Committee voted to maintain this item on the agenda as Informational pending the proposed formation of an Enhanced Product Working Group by the NCWM Board of Directors.

- The CWMA supports keeping this item as Informational until the NCWM Board of Directors appoints the Working Group.
- The WWMA supports keeping this item as Informational until the NCWM Board of Directors appoints the Working Group. The WWMA heard from Dennis Ehrhart, NCWM Chairman, that he would be appointing a Work Group in the near future.
- The SWMA heard comments that this really falls under USDA jurisdiction, and current USDA regulations permit the sale of these "enhanced products." With the limited resources available to the NCWM, the SWMA recommends that a Working Group not be formed, and the item be withdrawn.

Dennis Johannes, California, Chairman
Joe Gomez, New Mexico
Edwin Price, Texas
James Cassidy, Cambridge, Massachusetts
Vicky Dempsey, Montgomery County, Ohio

Vince Orr, ConAgra Foods, Associate Member Representative
Brian Lemon, Canada, Technical Advisor
Doug Hutchinson, Canada, Technical Advisor
Tom Coleman, NIST, Technical Advisor
Kathryn Dresser, NIST, Technical Advisor

Committee on Laws and Regulations