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Louis H. Sakin  
Sealer of Weights and Measures  
18 Main Street  
Hopkinton, MA 01748

Cc: Ethan N. Bogren  
Inspector, Department of Consumer Protector- Weights and Measures  
148 Martine Avenue  
Room 407  
White Plains, NY 10601

Dear Mr. Sakin:

I write to express our clients', the National Association of Convenient Stores (NACS) and the Society of Independent Gasoline Marketers of America (SIGMA), serious concerns regarding the recent action of the Northeastern Weights and Measures Association (NEWMA) to support an amendment to Handbook 44, reportedly proposed by NIST, which has now been forwarded to the National Council on Weights and Measures (NCWM) Committee on Law and Regulations for possible inclusion in Handbook 130. As detailed below, inclusion of the language proposed by NIST as the part of a method of sale regulation, would do a significant disservice to consumers and would be totally unacceptable to the fuel marketing community. Moreover, NACS and SIGMA believe that this language's becoming a part of a method of sale would be contrary to NCWM's primary objective of assuring equity in the marketplace.

#### Background

On October 15, 2014, NEWMA met in Norwich, CT. During the open hearings for the L&R Committee you, in your capacity as Chairman, invited the members of the Specifications and Tolerances (S&T) Committee to join you in consideration of a number of items on the agenda of both Committees relating to the marketing of natural gas, used as an engine fuel. During that "joint session" a regulator offered a NIST supported item which constituted a rewrite of Section 3.37 mass flow meters. Of particular interest to this topic, are Sections 1.3.1.1 – Section 1.3.3 of that item. The committees endorsed this item's going forward to the interim meeting of the (NCWM) without actually having examined it. Because this was done in joint session, this item,

originally proposed for inclusion in Handbook 44, will now be forwarded to the L&R Committee as well as the S&T Committee of NCWM.

As noted in my letter to Mr. Raymond Johnson, last year's Chairman of the NCWM L&R Committee, both NACS and SIGMA, when addressing issues relating to the retail sale of compressed natural gas and liquefied natural gas, support regulation which would permit the advertising and sale of "gallon equivalents" for these commodities, with the definition of a gallon equivalent and the measure of compliance by a sellers in transactions involving the sale of gallon equivalents being measured by mass. Such an approach will serve not only the regulating community's desire for improved measurement, but also the regulated community's need to communicate effectively with consumers in terms that consumers understand and which are meaningful to them.

#### Concerns

The language in the proposal designates anything describing a unit, other than the mass measured for each transaction, as supplemental information. It then states that "supplemental information shall not appear adjacent to or in close proximity to the primary display and shall be positioned far enough from the display so as to ensure that the quantity, unit price, and total price for the transaction is clearly and easily understood." It states further that "supplemental units shall be clearly designated with the phrase 'the following information is provided for comparison with other vehicle fuels and is not to be used as a basis of commercial transactions.'" Should this language be incorporated as a method of sale, it appears that it would prohibit the advertising and marketing of CNG and LNG to consumers in gallon equivalent units. Such a result would be completely unacceptable.

Fuels marketers intend to advertise and sell diesel gallon equivalents (DGE) and gasoline gallon equivalents (GGE). These are the units which consumers understand. How those units are defined and measured (for example, by mass) is a separate and distinct issue. However, retailers must be able to sell in DGE and GGE units.

It is completely appropriate for the metrology community to deal with issues of definition and measurement. However, SIGMA and NACS believe strongly it is inappropriate for the metrological community to substitute its judgment on "what" will be sold for the judgment of the marketplace.

#### Comments

Ultimately the objective of the Weights and Measure Community is to ensure that consumers receive from merchants that which they reasonably believe they are purchasing, i.e., that consumers get the benefit of their bargain. For that objective to be achieved, both parties to a transaction must communicate in terms which they both understand as a measurement of value.



In the transportation fuels market, the unit of value understood by consumers and sellers is the “gallon” or “gallon equivalent.” It is against this unit that a consumer can determine which option offered in the market best achieves his or her objective for value in a commercial context.

If the unit relevant to a fuel consumer is the gallon or its equivalent, then it is appropriate that NCWM define what constitutes a “gallon” or a “gallon equivalent” and how those units of value will be measured for compliance and enforcement purposes. It is our understanding, that measurement is the purpose of metrology and the expertise of metrologists. Applying methods of measurement to sales of commodities is the principal regulatory function of weight and measures official.

In stark contrast, determination of consumers’ preferences for how value is to be communicated in the market is not within the special expertise of the metrology community. If the market determines that the relevant unit of value in a commodity is the gallon, or its equivalent, then it is the role of the weights and measures community to define what constitutes such a unit and enforce that definition in the context of commercial transactions. It is not the role of metrology to substitute its judgment of what consumers “ought to want or understand” for the market’s. SIGMA and NACS believe that the indispensable roles played by the weights and measures community in commercial America is to make sure that a consumer gets the benefit of his or her bargain – no less than the amount promised.

The proposal to which NACS and SIGMA object crosses the line between the measurement and enforcement functions, historically, properly and importantly performed by the Weights and Measures Community, and passes into the realm of legislating the unit of value acceptable to a market. The proposal’s proponents have no empirical data to support the contention that consumers will understand the relative value of their market options if this proposal were to become a part of method of sale regulations. In making value decisions it is important that the consumer understand his or her options when choosing between commodities which are readily substitutable for each other. This is not only the basis for competition law in the United States; it is also the primary tenant of consumer protection law. The unit understood by consumers in the fuels markets is a gallon or gallon equivalent. Prohibiting the advertising and sale of a transportation in those terms does the consumer a disservice.

If consumers want a “gallon equivalent it is NCWM’s job to define it and enforce merchants’ compliance with that measure. It is not NCWM’s, or its members,’ job to tell consumers: “no, we have a better idea.”

## Conclusion

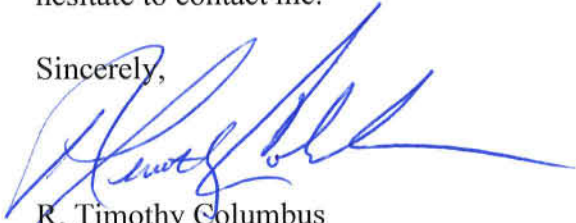
SIGMA and NACS oppose the adoption of the proposal endorsed by NEWMA. The fuels marketing community urges the NCWN to reject that proposal to the extent that it attempts to

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limit the market's ability to deal in gallon equivalents, or gallons, as the basis for a commercial transaction.

If we can provide you any further information in connection with this matter, please do not hesitate to contact me.

Sincerely,



R. Timothy Columbus  
Counsel  
National Association of Convenient Stores  
Society of Independent Gasoline Marketers of America