



Form 15: Proposal to Amend NIST Handbooks, NCWM Bylaws or NTEP Administrative Policy

General Information (See Instructions)

1. Date: 12/17/2015	2. Regional Association(s): (Not applicable for proposals to the Board of Directors or NTEP Committee) <input type="checkbox"/> Central (CWMA) <input type="checkbox"/> Northeastern (NEWMA) <input type="checkbox"/> Southern (SWMA) <input type="checkbox"/> Western (WWMA)			
3. Standing Committee:				
<input checked="" type="checkbox"/> Laws & Regulations <input type="checkbox"/> Specifications & Tolerances <input type="checkbox"/> Professional Development <input type="checkbox"/> Board of Directors <input type="checkbox"/> NTEP Committee				
4. Submitter Name: Lisa Warfield, NIST – Office of Weights & Measures				
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Proposal Information (See Instructions)

13. Purpose: Amend NIST Handbook 130 – Uniform Packaging and Labeling Regulations to have the requirements conform to the language finalized by FTC in their revision to regulations promulgated under the FPLA.
14. Handbook to be Amended: <input type="checkbox"/> NIST Handbook 44 <input checked="" type="checkbox"/> NIST Handbook 130 <input type="checkbox"/> NIST Handbook 133 <input type="checkbox"/> NCWM Bylaws <input type="checkbox"/> NTEP Administrative Policy Section: Paragraph: <ul style="list-style-type: none">- Background information– Provided background information regarding the 2015 FTC Amendments to the FPLA.- Section 5. Declaration of Responsibility: Consumer and Non-consumer Packages – amended language to include the use of on-line resources in lieu of a printed telephone directory- Section 6.7.1. Symbols and Abbreviations. – amended the language to add the term “and exponents”- Section 13. Retail Sale Price Representations – remove Section 13. in its entirety.
15. Proposal: See Attached document FPLA Modifications to UPLR
16. Justification: The Federal Trade Commission (FTC) finalized revisions to regulations promulgated under the Federal Fair Packaging and Labeling Act (FPLA). These amendments align the requirements of the UPLR with FTC regulations that are effective December 17, 2015.
17. Other Contacts: Kenneth Butcher, NIST – OWM , Davis Sefcik, NIST - OWM
18. Other Reasons For: Federal preemption item.
19. Other Reasons Against: none
20. Evidence: http://www.gpo.gov/fdsys/pkg/FR-2015-11-17/pdf/2015-28918.pdf
21. Additional Considerations:
22. Suggested Action: <input checked="" type="checkbox"/> Recommend NCWM Voting Item <input type="checkbox"/> Developing Item <input type="checkbox"/> Informational Item <input type="checkbox"/> Other (Please Describe):
23. List of Attachments:

Amendments to the Uniform Packaging and Labeling Regulation (UPLR) to bring its requirements into agreement with the 2015 Federal Trade Commission (FTC) revisions to its regulations under the Federal Fair Packaging and Labeling Act (FPLA). The FTC revisions are effective as of December 17, 2015. Amendments are shown in **bold face print** by ~~striking out~~ information to be deleted and underlining information to be added.

1. *Section A. of the Uniform Packaging and Labeling Regulation will be amended to include a notice of the FTC's 2015 action in Section 1. "Background."*

1. Background

The Uniform Packaging and Labeling Regulation was first adopted during the 37th Annual Meeting of the National Conference on Weights and Measures (NCWM) in 1952. Reporting to the Conference, the Committee on Legislation stated:

The National Conference should adopt a model package regulation for the guidance of those states authorized to adopt such a regulation under provisions of their weights and measures laws. Since so much of the work of weights and measures officials in the package field concerns food products, the importance of uniformity between the Federal (FDA) regulations and any model regulations to be adopted by this Conference cannot be overemphasized.

Since its inception, the Uniform Packaging and Labeling Regulation has been continually revised to meet the complexities of an enormous expansion in the packaging industry – an expansion that, in late 1966, brought about the passage of the Fair Packaging and Labeling Act (FPLA). Recognizing the need for compatibility with the Federal Act, in 1968 the Committee on Laws and Regulations of the 53rd Annual Meeting of the National Conference amended the “Model Packaging and Labeling Regulation” (renamed in 1983) to parallel regulations adopted by federal agencies under FPLA. The process of amending and revising this Regulation is a continuing one in order to keep it current with practices in the packaging field and make it compatible with appropriate federal regulations. Amendments and additions since 1971 are noted at the end of each section.

The revision of 1978 provided for the use of the metric system (SI) on labels as well as allowing SI-only labels for those commodities not covered by federal laws or regulations. “SI” means the International System of Units as established in 1960 by the General Conference on Weights and Measures and interpreted or modified for the United States by the Secretary of Commerce. [See the “Interpretation of the International System of Units for the United States” in the “Federal Register” (Volume 73, No. 96, pages 28432 to 28433) for May 16, 2008, and 15 United States Code, Section 205a - 205l “Metric Conversion.” See also NIST Special Publication 330 “The International System of Units (SI)” 2008 edition and NIST Special Publication 811 “Guide for the Use of the International System of Units (SI)” 2008 edition that are available at www.nist.gov/pml/wmd/ or by contacting TheSI@nist.gov.] In 1988, Congress amended the Metric Conversion Law to declare that it is the policy of the United States to designate the International System of Units of measurement as the preferred system of weights and measures for U.S. trade and commerce. In 1992, Congress amended the federal FPLA to require the most appropriate units of the SI and the U.S. customary systems of measurement on certain consumer commodities. The 1993 amendments to NIST Handbook 130 require SI and U.S. customary units on certain consumer commodities in accordance with federal laws or regulations. Requirements for labeling in both units of measure were effective February 14, 1994, under FPLA and as specified in Section 15. Effective Date; except as specified in Section 11.32. SI Units, Exemptions for Consumer Commodities.

In 2015, the Federal Trade Commission (FTC) conducted a periodic review of its regulations issued under the FPLA and recently published several revisions which go into effect on December 17, 2015. These regulations were last reviewed in 1994 [See the “Rules, Regulations, Statements of General Policy or Interpretation and Exemptions Under the Fair Packaging and Labeling Act – Final Rule” in the “Federal Register” (Volume 80, No. 221, pages 71686 to 71689) for Tuesday, November 17, 2015. In response to comments from the NCWM’s Packaging and Labeling Subcommittee, the FTC amended its regulations to clarify that exponents may be used in conjunction with U.S. Customary Units and recognized that with today’s online resources the location of a business can be readily obtained in lieu of using a printed telephone directory. The FTC amended its regulations on the Declaration of Responsibility to allow the street address to be omitted if it is accessible in a printed or online telephone directory, or any readily accessible, widely published and publicly available

resource. In response to a concern that the existing regulation included a limited table of metric conversions, the FTC decided to incorporate the more comprehensive metric conversion tables to provide users with the wide range of factors in NIST Handbook 133 (2015) “Checking the Net Contents of Packaged Goods,” Appendix E, General Tables of Units of Measurements. The FTC also revoked regulations on certain retail price sale representations, since they are no longer used in the marketplace. The regulation was also amended to aid state and local compliance efforts by alerting users of the role of the states in regulating packages that fall outside the scope of the FTC’s purview under the FPLA.

Nothing contained in this regulation should be construed to supersede any labeling requirement specified in federal law or to require the use of SI units on non-consumer packages.

Amendments to the UPLR are shown

In response to the FTC Final Rule the following amendments will be made to the UPLR in the 2015 Edition of NIST HB 130.

1. *The FTC revised § 500.5(c) to read as follows:*

§ 500.5 Name and place of business of manufacturer, packer or distributor.

(c) The statement of the place of business shall include the street address, city, state, and zip code; however, the street address may be omitted if it is listed in a readily accessible, widely published, and publicly available resource, including but not limited to a printed directory, electronic database, or Web site.

The following amendment will be made to Section 5 of the UPLR in the 2015 Edition of NIST Handbook 130:

Section 5. Declaration of Responsibility: Consumer and Non-consumer Packages

Any package kept, offered, or exposed for sale, or sold at any place other than on the premises where packed shall specify conspicuously on the label of the package the name and address of the manufacturer, packer, or distributor. The name shall be the actual corporate name, or, when not incorporated, the name under which the business is conducted. The address shall include street address, city, state (or country if outside the United States), and ZIP Code (or the mailing code, if any, used in countries other than the United States); however, the street address may be omitted ~~if this is shown in a current city directory or telephone directory if it is listed in any readily accessible, well-known, widely published, and publicly available resource, including but not limited to a printed directory, electronic database or Web site.~~
(Amendment effective 12/17/2015.)

If a person manufactures, packs, or distributes a commodity at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where the commodity was manufactured or packed or is to be distributed, unless such statement would be misleading. Where the commodity is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such commodity, such as “Manufactured for and packed by _____,” “Distributed by _____,” or any other wording of similar import that expresses the facts.

(Amended 20XX)

2. The FTC revised §500.22 “Abbreviations” by including the clarification that “Exponents are permitted” at the bottom of the table.

The following amendments will be made to Section 6.7.1. in the UPLR and will appear in the 2015 Edition of NIST Handbook 130:

- 6.7.1. Symbols and Abbreviations.** – Any of the following symbols and abbreviations, and none other, shall be employed in the quantity statement on a package of commodity:

avoirdupois	avdp	ounce	oz
piece	pc	count	ct
pint	pt	cubic	cu
pound	lb	each	ea
feet or foot	ft	quart	qt
fluid	fl	square	sq
gallon	gal	weight	wt
inch	in	yard	yd
liquid	liq	drained	dr
diameter	dia		

A period should not be used after the abbreviation. Abbreviations should be written in singular form; and “s” should not be added to express the plural. (For example, “oz” is the symbol for both “ounce” and “ounces.”) Both upper and lower case letters and exponents are acceptable.

(Amendment effective 12/17/2015.)

(Added 1974) (Amended 1980, 1990, and 1993, and 20XX)

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3. The FTC eliminated its regulations on when and how a packager may represent a commodity to be “cents off,” and “introductory offer,” or “economy size” (Note: The Food and Drug Administration revoked similar regulations in 1997). This decision was made because these practices are no longer prevalent in the marketplace and FTC has other enforcement tools to control deceptive practices.

In response to the FTC decision Section 13 “Retail Sale Price Representations” will be deleted from the UPLR in the 2015 Edition of NIST HB 130 and Section 14. “Revocation of Conflicting Regulations” and Section 15. “Effective Date” will be renumbered accordingly.

Section 13. Retail Sale Price Representations

13.1. “Cents off” Representations.

- (a) ~~The term “cents off representation” means any printed matter consisting of the words “cents off” or words of similar import (bonus offer, 2 for 1 sale, 1¢ sale, etc.), placed upon any consumer package or placed upon any label affixed or adjacent to such package, stating or representing by implication that it is being offered for sale at a price lower than the ordinary and customary retail sale price.~~

(Amended 1982)

- (b) ~~Except as set forth in Section 13.2. Introductory Offers, the packager or labeler of a consumer commodity shall not have imprinted thereon a “cents off” representation unless:~~

- (1) ~~The commodity has been sold at an ordinary and customary price in the most recent and regular course of business where the “cents off” promotion is made.~~

- (2) ~~The commodity so labeled is sold at a reduction from the ordinary and customary price, which reduction is at least equal to the amount of the "cents off" representation imprinted on the commodity package or label.~~
- (3) ~~Each "cents off" representation imprinted on the package or label is limited to a phrase that reflects that the price marked by the retailer represents the savings in the amount of the "cents off" the retailer's regular price; e.g., "Price Marked is ___ Cents Off the Regular Price," "Price Marked is ___ off the Regular Price of this Package", provided the package or label may in addition bear in the usual pricing spot a form reflecting a space for the regular price, the represented "cents off," and a space for the price to be paid by the consumer.~~
- (4) ~~The commodity at retail presents the regular price, designated as the "regular price", clearly and conspicuously on the package or label of the commodity or on a sign, placard, or shelf marker placed in a position contiguous to the retail display of the "cents off" marked commodity.~~
- i. ~~Not more than three "cents off" promotions of any single size commodity may be initiated in the same trade area within a 12-month period;~~
- ii. ~~At least 30 days must lapse between "cents off" promotions of any particular size packaged or labeled commodity in a specific trade area; and~~
- iii. ~~Any single size commodity so labeled may not be sold in a trade area for a duration in excess of six months within any 12-month period.~~
- (5) ~~Sales of any single size commodity so labeled in a trade area do not exceed in volume 50 % of the total volume of sales of such size commodity in the same trade area during any 12-month period. The 12-month period may be the calendar, fiscal, or market year provided the identical period is applied in this subparagraph and subparagraph (5) of this paragraph. Volume limits may be calculated on the basis of projections for the current year, but shall not exceed 50 % of the sales for the preceding year in the event actual sales are less than the projection for the current year.~~
- (e) ~~No "cents off" promotion shall be made available in any circumstances where it is known or there is reason to know that it will be used as an instrumentality for deception or for frustration of value comparison; for example, where the retailer charges a price that does not fully pass on to the consumers the represented price reduction or where the retailer fails to display the regular price in the display area of the "cents off" marked product.~~
- (b) ~~The sponsor of a "cents off" promotion shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection and shall be retained for a period of one year subsequent to the end of the year (calendar, fiscal, or market) in which the "cents off" promotion occurs.~~

(Added 1972)

13.2. Introductory Offers

- (a) ~~The term "introductory offer" means any printed matter consisting of the words "introductory offer" or words of similar import, placed upon a package containing any new commodity or upon any label affixed or adjacent to such new commodity, stating or representing by implication that such new commodity is offered for retail sale at a price lower than the anticipated ordinary and customary retail sale price.~~
- (b) ~~The packager or labeler of a consumer commodity may not have imprinted thereon an introductory offer unless:~~

- (1) ~~The product contained in the package is new, has been changed in a functionally significant and substantial respect, or is being introduced into a trade area for the first time.~~
 - (2) ~~Each offer on a package or label is clearly and conspicuously qualified.~~
 - (3) ~~No commodity so labeled is sold in a trade area for duration in excess of six months.~~
 - (4) ~~At the time of making the introductory offer promotion, the offerer intends in good faith to offer the commodity, alone, at the anticipated ordinary and customary price for a reasonably substantial period of time following the duration of the introductory offer promotion.~~
 - (c) ~~The packager or labeler of a consumer commodity shall not have imprinted thereon an introductory offer in the form of a "cents off" representation unless, in addition to the requirements in paragraph (b) of this section:~~
 - (1) ~~The package or label clearly and conspicuously and in immediate conjunction with the phrase "Introductory Offer" bears the phrase "_____ cents off the after introductory offer price."~~
 - (2) ~~The commodity so labeled is sold at a reduction from the anticipated ordinary customary price, which reduction is at least equal to the amount of the reduction from the after introductory offer price representation on the commodity package or label.~~
 - (d) ~~No introductory offer with a "cents off" representation shall be made available in any circumstance where it is known or there is reason to know that it will be used as an instrumentality for deception or for frustration of value comparison; e.g., where the retailer charges a price that does not fully pass on to consumers the represented price reduction.~~
 - (e) ~~The sponsor of an introductory offer shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection and shall be retained for a period of one year subsequent to the period of the introductory offer.~~
- ~~(Added 1972)~~

13.3. Economy Size.

- (a) ~~The term "economy size" means any printed matter consisting of the words "economy size," "economy pack," "budget pack," "bargain size," "value size," or words of similar import placed upon any package containing any consumer commodity or placed upon any label affixed or adjacent to such commodity, stating or representing directly or by implication that a retail sale price advantage is accorded the purchaser thereof by reason of the size of that package or the quantity of its contents.~~
- (b) ~~The packager or labeler of a consumer commodity may not have imprinted thereon an "economy" size representation unless:
 - (1) At the same time the same brand of the commodity is offered in at least one other packaged size or labeled form.
 - (2) Only one packaged or labeled form of that brand of commodity labeled with an "economy size" representation is offered.
 - (3) The commodity labeled with an "economy size" representation is sold at a price per unit of weight, volume, measure, or count that is substantially reduced (i.e., at least 5 %) from the actual price of all other packaged or labeled units of the same brand of that commodity offered simultaneously.~~

~~(c) No "economy size" package shall be made available in any circumstances where it is known that it will be used as an instrumentality for deception; e.g., where the retailer charges a price that does not pass on to the consumer the substantial reduction in cost per unit initially granted.~~

~~(d) The sponsor of an "economy size" package shall prepare and maintain invoices or other records showing compliance with paragraph (b) of this section. The invoices or other records required by this section shall be open to inspection and shall be retained for one year.~~

(Added 1972)