

III. Uniform Laws

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Uniform Weights and Measures Law

as adopted by
The National Conference on Weights and Measures*

1. Background

Recognition of the need for uniformity in weights and measures laws and regulations among the States was first noted at the Second Annual Meeting of the National Conference on Weights and Measures in April 1906. In the following year, basic outlines of a "Model State Weights and Measures Law" were developed. The first "Model Law," as such, was formally adopted by the Conference in 1911.

Through the years, almost without exception, each State has relied upon the NCWM Weights and Measures Law when the State first enacted comprehensive weights and measures legislation. This has led to a greater degree of uniformity in the basic weights and measures requirements throughout the country.

The original Law was regularly amended to provide for new developments in commercial practices and technology. This resulted in a lengthy and cumbersome document and in the need for a simplification of the basic weights and measures provisions. The 1971 National Conference on Weights and Measures adopted a thoroughly revised, simplified, modernized version of the "Model State Weights and Measures Law." This Law now can serve as a framework for all the many concerns in weights and measures administration and enforcement.

The title of the Law was changed by the 1983 NCWM. Amendments or revisions to the Law since 1971 are noted at the end of each section.

Sections 4 through 10 of the Uniform Weights and Measures Law adopt NIST Handbook 44 and the Uniform Regulations in NIST Handbook 130 by citation. In addition, these sections adopt supplements to and revisions of Handbook 44 and the Uniform Regulations "except

insofar as modified or rejected by regulation." Some State laws may not permit enacting a statute that provides for automatic adoption of future supplements to or revisions of a Uniform Regulation covered by that statute. If this should be the case in a given State, two alternatives are available:

(a) Sections 4 through 10 may be enacted without the phrase "... and supplements thereto or revisions thereof..."

(b) Sections 4 through 10 may be enacted by replacing "... except insofar as modified or rejected by regulation..." with the phrase "...as adopted, or amended and adopted, by rule of the director."

Either alternative requires action on the part of the director to adopt a current version of Handbook 44 and each Uniform Regulation each time a supplement or revision is made by the National Conference on Weights and Measures.

2. Status of Promulgation

See the table beginning on page 8 for the status of adoption of the Uniform Weights and Measures Law.

**The National Conference on Weights and Measures is supported by the National Institute of Standards and Technology in partial implementation of its statutory responsibility for "cooperation with the States in securing uniformity in weights and measures laws and methods of inspection."*

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Uniform Weights and Measures Law

Section 1. Definitions. When used in this Act:

1.1. Weight(s) and (or) Measure(s). -- The term "weight(s) and (or) measure(s)" means all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices.

1.2. Weight. -- The term "weight" as used in connection with any commodity or service means net weight. When a commodity is sold by drained weight, the term means net drained weight.
(Amended 1974, 1990)

1.3. Correct. -- The term "correct" as used in connection with weights and measures means conformance to all applicable requirements of this Act.

1.4. Primary Standards. -- The term "primary standards" means the physical standards of the State that serve as the legal reference from which all other standards for weights and measures are derived.

1.5. Secondary Standards. -- The term "secondary standards" means the physical standards that are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.

1.6. Director. -- The term "director" means the___ of the Department of_____.

1.7. Person. -- The term "person" means both plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.

1.8. Sale from Bulk. -- The term "sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

1.9. Package. -- Except as modified by § 1. Application of the Uniform Packaging and Labeling Regulation, the term "package," whether standard package or random package, means any commodity:

(a) enclosed in a container or wrapped in any manner in advance of wholesale or retail sale or

(b) whose weight or measure has been determined in advance of wholesale or retail sale.

An individual item or lot of any commodity on which there is marked a selling price based on an established price per unit of weight or of measure shall be considered a package (or packages).
(Amended 1991)

1.10. Net "Mass" or Net "Weight." -- The term "net mass" or "net weight" means the weight^[Note 1, see page 19] of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, and coupons, except that, depending on the type of service rendered, packaging materials may be considered to be part of the service. For example, the service of shipping includes the weight of packing materials.
(Added 1988; Amended 1989, 1991, 1993)

NOTE 1: When used in this law, the term "weight" means "mass." (See paragraph V. and W. in Section I., Introduction, of NIST Handbook 130 for an explanation of these terms.)
(Note added 1993)

1.11. Random Weight Package. -- A package that is one of a lot, shipment, or delivery of packages of the same commodity with no fixed pattern of weights.
(Added 1990)

1.12. Standard Package. -- A package that is one of a lot, shipment, or delivery of packages of the same commodity with identical net contents declarations; for example, 1 L bottles or 12 fl oz cans of carbonated soda; 500 g or 5 lb bags of sugar; 100 m or 300 ft packages of rope.
(Added 1991; Amended 1993)

1.13. Commercial Weighing and Measuring Equipment. -- The term "commercial weighing and measuring equipment" means weights and measures and weighing and measuring devices commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure.

(Added 1995)

Section 2. Systems of Weights and Measures

The International System of Units (SI)^[Note 2, see page 20] and the system of weights and measures in customary use in the United States are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the State. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the National Institute of Standards and Technology are recognized and shall govern weighing and measuring equipment and transactions in the State.

(Amended 1993)

NOTE 2: *The "International System of Units" means the modernized metric system 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 Metric Conversion Act of 1975 (Public Law 94-168, § 3(1) and § 4(4), and NIST Special Publication 814 - Metric System of Measurement; Interpretation of the International System of Units for the United States, or the Federal Register of December 20, 1990, (FR 90-21913).] (Added 1993)*

Section 3. Physical Standards

Weights and measures that are traceable to the U.S. prototype standards supplied by the Federal Government, or approved as being satisfactory by the National Institute of Standards and Technology, shall be the State primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the National Institute of Standards and Technology. All secondary standards may be prescribed by the director and shall be verified upon their initial receipt, and as often thereafter as deemed necessary by the director.

Section 4. Technical Requirements for Weighing and Measuring Devices^[NOTE 3, see page 20]

The specifications, tolerances, and other technical requirements for commercial, law enforcement, data gathering, and other weighing and measuring devices as adopted by the National Conference on Weights and Measures, published in the National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in the State, except insofar as modified or rejected by regulation.

(Amended 1975)

[NOTE 3: *Sections 4 through 10 of the Uniform Weights and Measures Law adopt NIST Handbook 44 and Uniform Regulations in NIST Handbook 130 by citation. In addition, these sections adopt supplements to and revisions of NIST Handbook 44 and the Uniform Regulations "except insofar as modified or rejected by regulation." Some State laws may not permit enacting a statute that provides for automatic adoption of future supplements to or revisions of a regulation covered by that statute. If this should be the case in a given State, two alternatives are available:*

- (a) *Sections 4 through 10 may be enacted without the phrase "...and supplements thereto or revisions thereof..."*
- (b) *Sections 4 through 10 may be enacted by replacing "...except insofar as modified or rejected by regulation ..." with the phrase "...as adopted, or amended and adopted, by rule of the director."*

Either alternative requires action on the part of the director to adopt a current version of the Handbook 44 and each Uniform Regulation each time a supplement is added or revision is made by the National Conference on Weights and Measures.]

Section 5. Requirements for Packaging and Labeling^[NOTE 3, see page 20]

The Uniform Packaging and Labeling Regulation as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to packaging and labeling in the State, except insofar as modified or rejected by regulation.

(Added 1983)

Section 6. Requirements for the Method of Sale of Commodities^[NOTE 3, see page 20]

The Uniform Regulation for the Method of Sale of Commodities as adopted by the National Conference on Weights and Measures and published in National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to the method of sale of commodities in the State, except insofar as modified or rejected by regulation.

(Added 1983)

Section 7. Requirements for Unit Pricing^[NOTE 3, see page 20]

The Uniform Unit Pricing Regulation as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to unit pricing in the State, except insofar as modified or rejected by regulation.

(Added 1983)

Section 8. Requirements for the Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices^[NOTE 3, see page 20]

The Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to the registration of servicepersons and service agencies in the State, except insofar as modified or rejected by regulation.

(Added 1983)

Section 9. Requirements for Open Dating^[NOTE 3, see page 20]

The Uniform Open Dating Regulation as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to open dating in the State, except insofar as modified or rejected by regulation.

(Added 1983)

Section 10. Requirements for Type Evaluation^[NOTE 3, see page 20]

The Uniform Regulation for National Type Evaluation as adopted by the National Conference on Weights and Measures and published in National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to type evaluation in the State, except insofar as modified or rejected by regulation.

(Added 1985)

Section 11. State Weights and Measures Division

There shall be a State Division of Weights and Measures located for administrative purposes within the Department

of (agency, etc.). The Division is charged with, but not limited to, performing the following functions on behalf of the citizens of the State:

(a) Assuring that weights and measures in commercial services within the State are suitable for their intended use, properly installed, and accurate, and are so maintained by their owner or user.

(b) Preventing unfair or deceptive dealing by weight or measure in any commodity or service advertised, packaged, sold, or purchased within the State.

(c) Making available to all users of physical standards or weighing and measuring equipment the precision calibration and related metrological certification capabilities of the weights and measures facilities of the Division.

(d) Promoting uniformity, to the extent practicable and desirable, between weights and measures requirements of this State and those of other States and Federal agencies.

(e) Encouraging desirable economic growth while protecting the consumer through the adoption by rule of weights and measures requirements as necessary to assure equity among buyers and sellers.

(Added 1976)

Section 12. Powers and Duties of the Director

The director shall:

(a) maintain traceability of the State standards to the national standards in the possession of the National Institute of Standards and Technology;

(b) enforce the provisions of this Act;

(c) issue reasonable regulations for the enforcement of this Act, which regulations shall have the force and effect of law;

(d) establish labeling requirements, establish requirements for the presentation of cost-per-unit information, establish standards of weight, measure, or count, and reasonable standards of fill for any packaged commodity; and establish requirements for open dating information;

(Added 1973)

(e) grant any exemptions from the provisions of this Act or any regulations promulgated pursuant thereto when appropriate to the maintenance of good commercial practices

within the State;

(f) conduct investigations to ensure compliance with this Act;

(g) delegate to appropriate personnel any of these responsibilities for the proper administration of this office;

(h) test annually the standards for weights and measures used by any city or county within the State, and approve the same when found to be correct;

(i) have the authority to inspect and test commercial weights and measures kept, offered, or exposed for sale; (Amended 1995)

(j) inspect and test, to ascertain if they are correct, weights and measures commercially used:

(1) in determining the weight, measure, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or count, or

(2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or count;

(k) test all weights and measures used in checking the receipt or disbursement of supplies in every institution, the maintenance of which funds are appropriated by the legislature of the State;

(l) approve for use, and may mark, such commercial weights and measures as are found to be correct, and shall reject and order to be corrected, replaced, or removed such commercial weights and measures as are found to be incorrect. Weights and measures that have been rejected may be seized if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The director shall remove from service and may seize the weights and measures found to be incorrect that are not capable of being made correct; (Amended 1995)

(m) weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this Act or regulations promulgated pursuant thereto. In carrying out the provisions of this section, the director shall employ recognized sampling procedures, such as are adopted by the National Conference on Weights and Measures and are published in the National

Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods;" (Amended 1984, 1988, 2000)

(n) prescribe, by regulation, the appropriate term or unit of weight or measure to be used, whenever the director determines that an existing practice of declaring the quantity of a commodity or setting charges for a service by weight, measure, numerical count, time, or combination thereof, does not facilitate value comparisons by consumers, or offers an opportunity for consumer confusion; (Amended 1991)

(o) allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

(p) provide for the training of weights and measures personnel, and may establish minimum training and performance requirements which shall then be met by all weights and measures personnel, whether county, municipal, or State. The director may adopt the training standards of the National Conference on Weights and Measures' National Training Program; and (Added 1991)

(q) verify advertised prices, price representations, and point-of-sale systems, as deemed necessary, to determine: (1) the accuracy of prices and computations and the correct use of the equipment, and (2) if such system utilizes scanning or coding means in lieu of manual entry, the accuracy of prices printed or recalled from a database. In carrying out the provisions of this section, the director shall: (i) employ recognized procedures, such as are designated in National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations, "Examination Procedures for Price Verification," (ii) issue necessary rules and regulations regarding the accuracy of advertised prices and automated systems for retail price charging (referred to as "point-of-sale systems") for the enforcement of this section, which rules shall have the force and effect of law; and (iii) conduct investigations to ensure compliance. (Added 1995)

Section 13. Special Police Powers

When necessary for the enforcement of this Act or regulations promulgated pursuant thereto, the director is:

(a) Authorized to enter any commercial premises during normal business hours, except that in the event such

premises are not open to the public, he/she shall first present his/her credentials and obtain consent before making entry thereto, unless a search warrant has previously been obtained.

(b) Empowered to issue stop-use, hold, and removal orders with respect to any weights and measures commercially used, stop-sale, hold, and removal orders with respect to any packaged commodities or bulk commodities kept, offered, or exposed for sale.

(c) Empowered to seize, for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of the provisions of this Act or regulations promulgated pursuant thereto.

(d) Empowered to stop any commercial vehicle and, after presentation of his credentials, inspect the contents, require the person in charge of that vehicle produce any documents in his possession concerning the contents, and require him to proceed with the vehicle to some specified place for inspection.

(e) With respect to the enforcement of this Act, the director is hereby vested with special police powers, and is authorized to arrest, without formal warrant, any violator of this Act.

Section 14. Powers and Duties of Local Officials

Any weights and measures official appointed for a county or city shall have the duties and powers enumerated in this Act, excepting those duties reserved to the State by law or regulation. These powers and duties shall extend to their respective jurisdictions, except that the jurisdiction of a county official shall not extend to any city for which a weights and measures official has been appointed. No requirement set forth by local agencies may be less stringent than or conflict with the requirements of the State. (Amended 1984)

Section 15. Misrepresentation of Quantity

No person shall:

(a) sell, offer, or expose for sale a quantity less than the quantity represented, nor

(b) take more than the represented quantity when, as buyer, he/she furnishes the weight or measure by means of which the quantity is determined, nor

(c) represent the quantity in any manner calculated or tending to mislead or in any way deceive another person. (Amended 1975, 1990)

Section 16. Misrepresentation of Pricing

No person shall misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.

Section 17. Method of Sale

Except as otherwise provided by the director or by firmly established trade custom and practice,

(a) commodities in liquid form shall be sold by liquid measure or by weight, and

(b) commodities not in liquid form shall be sold by weight, by measure, or by count.

The method of sale shall provide accurate and adequate quantity information that permits the buyer to make price and quantity comparisons.

(Amended 1989)

Section 18. Sale from Bulk

All bulk sales in which the buyer and seller are not both present to witness the measurement, all bulk deliveries of heating fuel, and all other bulk sales specified by rule or regulation of the director shall be accompanied by a delivery ticket containing the following information:

(a) the name and address of the buyer and seller;

(b) the date delivered;

(c) the quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity for example, when temperature compensated sales are made; (Amended 1991)

(d) the unit price, unless otherwise agreed upon by both buyer and seller; (Added 1991)

(e) the identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and

(f) the count of individually wrapped packages, if more than one, in the instance of commodities bought from bulk but delivered in packages.
(Amended 1983, 1991)

Section 19. Information Required on Packages

Except as otherwise provided in this Act or by regulations promulgated pursuant thereto, any package, whether a random package or a standard package, kept for the purpose of sale, or offered or exposed for sale, shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

(a) The identity of the commodity in the package, unless the commodity is a food, other than meat or poultry, that was repackaged in a retail establishment and the food is displayed to the purchaser under either of the following circumstances: (1) its interstate labeling is clearly in view or with a counter card, sign or other appropriate device bearing prominently and conspicuously the common or usual name of the food, or (2) the common or usual name of the food is clearly revealed by its appearance;
(Amended 2001)

(b) the quantity of contents in terms of weight, measure, or count; and,

(c) the name and place of business of the manufacturer, packer, or distributor, in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed.
(Amended 1991)

Section 20. Declarations of Unit Price on Random Weight Packages

In addition to the declarations required by § 19 of this Act, any package being one of a lot containing random weights of the same commodity, at the time it is offered or exposed for sale at retail, shall bear on the outside of the package a plain and conspicuous declaration of the price per kilogram or pound and the total selling price of the package.
(Amended 1986)

Section 21. Advertising Packages for Sale

Whenever a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or regulation to appear on the package.
(Amended 1993)

Section 22. Prohibited Acts

No person shall:

(a) use or have in possession for use in commerce any incorrect weight or measure;

(b) sell or offer for sale for use in commerce any incorrect weight or measure;

(c) remove any tag, seal, or mark from any weight or measure without specific written authorization from the proper authority;

(d) hinder or obstruct any weights and measures official in the performance of his or her duties; or

(e) violate any provisions of this Act or regulations promulgated under it.

Section 23. Civil Penalties

23.1. Assessment of Penalties. -- Any person who by himself or herself, by his or her servant or agent, or as the servant or agent of another person, commits any of the acts enumerated in § 22 may be assessed by the _____ a civil penalty of:

(a) not less than \$__ nor more than \$__ for a first violation,

(b) not less than \$__ nor more than \$__ for a second violation within __ from the date of the first violation, and

(c) not less than \$__ nor more than \$__ for a third violation within __ from the date of the first violation.

23.2. Administrative Hearing. -- Any person subject to a civil penalty shall have a right to request an administrative hearing within __ days of receipt of the notice of the penalty. The director or his/her designee shall be authorized to conduct the hearing after giving appropriate notice to the respondent. The decision of the director shall be subject to appropriate judicial review.

23.3. Collection of Penalties. -- If the respondent has exhausted his or her administrative appeals and the civil penalty has been upheld, he or she shall pay the civil penalty within __ days after the effective date of the final decision. If the respondent fails to pay the penalty, a civil action may be brought by the director in any court of competent jurisdiction to recover the penalty. Any civil penalty collected under this Act shall be transmitted to _____.

(Added 1989) (Amended 1995)

Section 24. Criminal Penalties

24.1. Misdemeanors. -- Any person who commits any of the acts enumerated in § 22 shall be guilty of a class _____ misdemeanor and upon a first conviction thereof shall be punished by a fine of not less than \$ _____ nor more than \$ _____ or by imprisonment for not more than _____ months, or both. Upon a subsequent conviction thereof, he or she shall be punished by a fine of not less than \$ _____ nor more than \$ _____ or by imprisonment for up to _____, or both.

24.2. Felonies. -- Any person who:

(a) intentionally violates any provisions of this Act or regulations under it;

(b) is convicted under the misdemeanor provisions of § 24 (a) more than three times in a 2-year period;

(c) uses or has in his or her possession a device which has been altered to facilitate fraud shall be guilty of a class _____ felony and upon a first offense shall be punished by a fine of not less than \$ ___, or by imprisonment for not more than _____, or both.

(Added 1989)

Section 25. Restraining Order and Injunction

The director is authorized to apply to any court of competent jurisdiction for a restraining order, or a temporary or permanent injunction, restraining any person from violating any provision of this Act.

(Retitled 1989)

Section 26. Presumptive Evidence

Whenever there shall exist a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weight or measure or weighing or measuring device is regularly used for the business purposes of that place.

Section 27. Separability Provision

If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Section 28. Repeal of Conflicting Laws

All laws and parts of laws contrary to or inconsistent with the provisions of this Act are repealed except as to offenses committed, liabilities incurred, and claims made thereunder prior to the effective date of this Act.

Section 29. Regulations to be Unaffected by Repeal of Prior Enabling Statute

The adoption of this Act or any of its provisions shall not affect any regulations promulgated pursuant to the authority of any earlier enabling statute unless inconsistent with this Act or modified or revoked by the director.

Section 30. Effective Date

This Act shall become effective on _____.