

February 2004

Non-consumer Packages in the Consumer Marketplace

By Kathy Dresser

More and more, packages that the manufacturer or packer never intended for retail sale are finding their way into the consumer marketplace. With membership clubs and wholesale retailers springing up in every city, products that were neither packaged nor labeled for re-sale are being pulled into the retail consumer market.

The NIST Laws and Metric Group has been receiving a growing number of questions from manufacturers and weights and measures officials about how these products should be labeled and to what standards they should be held. Most callers question whether or not packages should be held to consumer package standards if they are labeled with “for institutional use” or other similar language. NIST recommends the following: If a package is being offered for sale in a retail store, it must meet all of the Handbook 130 consumer package requirements, including packaging and labeling, method of sale, etc. If a product manufacturer or packer labels the product and the package does not otherwise meet the requirements for consumer packages, then that product should not be offered for sale at the retail level.

However, weights and measures officials who are contemplating enforcement action on these products must give careful consideration to identify the party responsible for the error. It may not be the manufacturer or packer who is at fault, but the retailer. If the product is packaged for the non-consumer market and clearly labeled with language like “for institutional use,” arguably the intent of the manufacturer or packer was that this product be sold somewhere other than in the retail marketplace. The manufacturer or packer has done what it could to make that intent clear. Once the product enters the distribution system, however, the manufacturer or packer may not have any further control over the final destination of the product. In some circumstances it may be the decision of the retailer to sell this product in the consumer marketplace that violates Handbook 130 regulations, not the decision of the manufacturer or packer to package and label the product for non-consumer use.

If you have questions or would like additional assistance with packaging and labeling requirements, contact Kathy Dresser at 301-975-3289 or by email at kathryn.dresser@nist.gov.