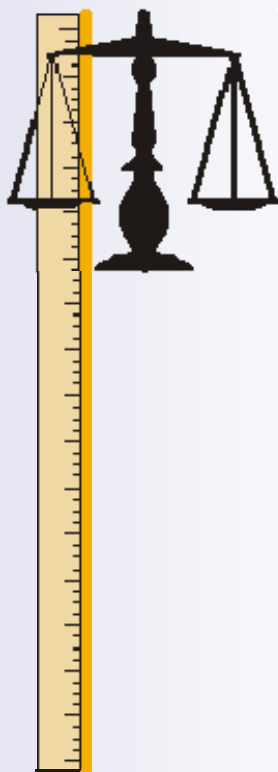


Training Module



Two

Laws and Regulations

*Training for the
Weights and Measures Official*



TRAINING FOR THE WEIGHTS AND MEASURES OFFICIAL

CURRICULUM

MODULE 2 - LAWS AND REGULATIONS

- Module 1 - Introduction to Weights and Measures**
- Module 3 - Enforcement Procedures**
- Module 4 - Legal Action**
- Module 5 - Legal Metrology**
- Module 6 - Field Standards and Test Equipment**
- Module 7 - Basic Weighing and Measuring Principles**
- Module 8 - Device Type Evaluation**
- Module 9 - Weighing Devices**
- Module 10 - Measuring Devices**
- Module 11 - Weighmaster Enforcement**
- Module 12 - Petroleum Products**
- Module 13 - Quantity Control**
- Module 14 - Service Agencies and Agents**



Acknowledgment

Developing a training program for weights and measures officials is a challenging and ambitious project. It requires time, dedication, and expertise from many individuals.

It is impossible to list the names of the many people who contributed to the development of this course. However, gratitude is extended to the following groups whose dedication and commitment made this training module a reality.

Module Team

David Lazier

Editing Team

Dennis Johannes
David Lazier
Roger Macey

Production Team

Carol Allen
Angie Averitt

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Introduction

Welcome to “Laws and Regulations”. This is the second module in the series “Training for the Weights and Measures Official”. It will introduce you to the Legislative process in California. It will also explain how and where regulations affecting weights and measures law come from.

At the end of each segment in this module you will find a series of self-evaluation questions to test your knowledge. Although you are not required to complete the self-evaluation, we encourage you to take a few minutes to read the questions before moving on to the next segment. Answers are provided at the end of the module. If you are unsure of a response, reread the training material and it will give you the information you need.

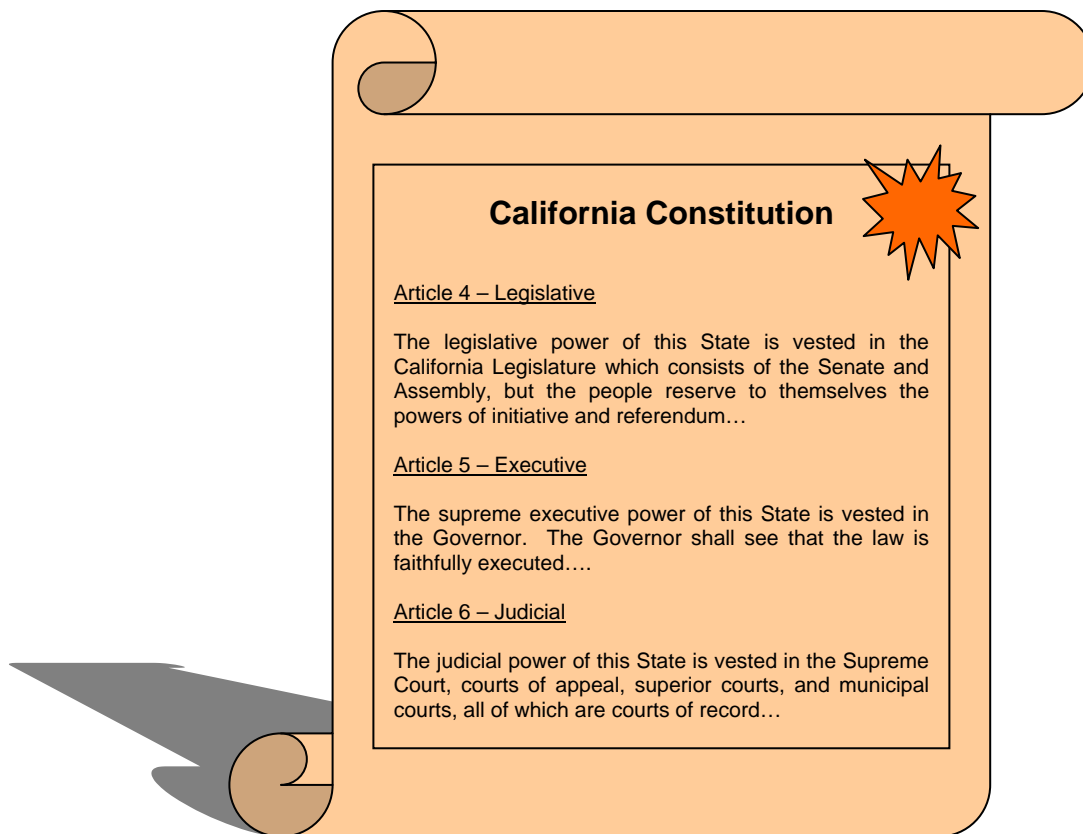
Module Objectives

When you have completed this module you will know:

- The difference between a law and a regulation.
- How an idea becomes a proposed law.
- How a proposed law makes its way through the Legislature.
- What happens to a law after the Legislature passes it and it is sent to the Governor.
- How regulations are proposed and adopted.
- Where weights and measures regulations come from.

Laws and Regulations

The California Constitution separates the powers of the State government into the Legislative, Executive, and Judicial Branches. It also provides that persons charged with the exercise of one of these powers may not exercise either of the other two except as permitted by the Constitution. The Constitution vests only the Legislative Branch with the power to make laws (also called statutes) and also reserves the rights of the people to create and change laws through the initiative and referendum process. The Executive Branch, of which weights and measures is a part, is not given the power to make laws.



How Laws and Regulations Differ

What is a law?

A law is a body of rules of action, adopted by the Legislature, either requiring you to do something or prohibiting you from doing something. The failure to act in accordance with the requirements of a law will subject you to the prescribed penalties attached to that law. Laws may be self-executing, wholly enabling, or susceptible to interpretation.

Self-Executing	Law that is so specific that it does not need to be interpreted by regulation. For example, <i>“The principal weighmaster license fee is \$75.00 per year.”</i> This type of law is enforceable on its face.
Wholly Enabling	Law that has no legal effect without the enactment of a regulation. For example, <i>“The Department shall establish specifications for engine coolants and recycled engine coolants that promote the public safety in the operation of motor vehicles.”</i> This type of law can not be enforced until a regulation is adopted to establish the specifications for engine coolants.
Susceptible to Interpretation	Law that its interpretation may be enforced without regulation, but may need a regulation for its efficient enforcement. For example, <i>“There shall be adequate space between parked cars in a public parking lot.”</i> This law could be enforced on a case-by-case basis, but without a clarifying regulation, the enforcement would present significant difficulties.

California weights and measures laws are found in the California Business and Professions Code, Division 5.

What is a regulation?

A regulation generally is a body of guidelines that interpret, implement, or clarify a law, adopted by the agency responsible for enforcing that law in accordance with the Administrative Procedures Act. Every law does not necessarily require the adoption of implementing regulations.

For example, in the case of the public parking lot, what constitutes “adequate space between parked cars”? The agency charged with enforcing the law certainly would want to adopt regulations that clarify that ambiguous statement and make it easier to enforce. A regulation regarding this might state:

“Parking spaces in public parking lots shall be marked on both sides with white lines four (4) inches wide. The width of the enclosed space between the white lines shall be ninety-six (96) inches wide.”

California weights and measures regulations are found in the California Code of Regulations, Title 4, Division 9.

A word of caution to the weights and measures official

As a weights and measures official, you will be provided with various program manuals, examination procedures outline, and other useful information that explains how to do your job. You must remember that these various manuals are only guidelines to assist you in proper testing procedures, inspection procedures, and sampling procedures. They are not the law and since they are guidelines, you may not reference them or their various sections as part of a Notice of Violation, a citation (Notice to Appear), or criminal or civil filing. You must reference the proper Business and Professions Code section(s) and the appropriate Code of Regulations section(s). The various manuals may only be used to explain how you performed your inspection, sampling, or testing.



SELF-EVALUATION QUESTIONS

1. How are the powers of State government separated and what are their responsibilities?
2. What is a law?
3. What is a regulation?

How an Idea Becomes a Law



The process of government by which bills are considered and laws enacted is commonly referred to as the Legislative Process. The California State Legislature is made up of two houses: the Senate and the Assembly. There are 40 Senators and 80 Assembly Members representing the people of the State of California. The Legislature has a legislative calendar containing important dates of activities during its two-year session.

Idea

All legislation begins as an idea or concept. Ideas and concepts can come from a variety of sources. The process begins when a Senator or Assembly Member decides to author a bill.

The Sponsor

A private citizen, a special interest group, or an industry may approach their legislator with an idea for a law that they feel needs to be enacted for a variety of reasons – personal tragedy, to allow for certain types of business dealings, environmental protection, or other reasons. If they can convince the legislator to introduce the idea, they become the sponsor of the bill.

The Author

A Legislator sends the idea for the bill to the Legislative Counsel where it is drafted into the actual bill. The draft of the bill is returned to the Legislator for introduction. If the author is a Senator, the bill is introduced in the Senate. If the author is an Assembly Member, the bill is introduced in the Assembly.



First Reading/Introduction

A bill is introduced or read the first time when the bill number, the name of the author, and the descriptive title of the bill is read on the floor of the house. The bill is then sent to the Office of State Printing. No bill may be acted upon until 30 days has passed from the date of its introduction.

Committee Hearings

The bill then goes to the Rules Committee of the house of origin where it is assigned to the appropriate policy committee for its first hearing. Bills are assigned to policy committees according to subject area of the bill. For example, a Senate bill dealing with health care facilities would first be assigned to the Senate Health and Human Services Committee for policy review. Bills that require the expenditure of funds must also be heard in the fiscal committees: Senate Appropriations or Assembly Appropriations. Each house has a number of policy committees and a fiscal committee. Each committee is made up of a specified number of Senators or Assembly Members.

During the committee hearing the author presents the bill to the committee and testimony can be heard in support of or opposition to the bill. The committee then votes by passing the bill, passing the bill as amended, or defeating the bill. Bills can be amended several times. Letters of support or opposition are important and should be mailed to the author and committee members before the bill is scheduled to be heard in committee. It takes a majority vote of the full committee membership for a bill to be passed by the committee.

Each house maintains a schedule of legislative committee hearings. Prior to a bill's hearing, a bill analysis is prepared by the Legislative Counsel that explains current law, what the bill is intended to do, and some background information. Typically, the analysis also lists organizations that support or oppose the bill. This analysis is called the "Legislative Counsel's Digest".

Each agency that will be affected by the proposed legislation also prepares a bill analysis for the Governor's Office. This analysis explains how the legislation will affect that agency, how the new or amended law will be implemented, how it will be paid for if the proposal does not contain funding, how other states handle similar issues, and the pros and cons of the proposal.

Second and Third Reading

Bills passed by committees are read a second time on the floor in the house of origin and then assigned to third reading. Bill analyses are also prepared prior to third reading. When a bill is read the third time it is explained by the author, discussed by

the Members and voted on by a roll call vote. Bills that require an appropriation or that take effect immediately generally require 27 votes in the Senate and 54 votes in the Assembly to be passed. Other bills generally require 21 votes in the Senate and 41 votes in the Assembly. If a bill is defeated, the Member may seek reconsideration and another vote.

Repeat Process in Other House

Once the bill has been approved by the house of origin it proceeds to the other house where the procedure is repeated.

Resolution of Differences

If a bill is amended in the second house, it must go back to the house of origin for concurrence, which is agreement on the amendments. If agreement cannot be reached, the bill is referred to a two house conference committee to resolve differences. Three members of the committee are from the Senate and three are from the Assembly. If a compromise is reached, the bill is returned to both houses for a vote.

Governor

If both houses approve a bill, it then goes to the Governor. The Governor has three choices. The Governor can sign the bill into law, allow it to become law without his or her signature, or veto it. A Governor's veto can be overridden by a two-thirds vote in both houses. Most bills go into effect on the first day of January of the next year. Urgency measures take effect immediately after they are signed or allowed to become law without signature.

California Law

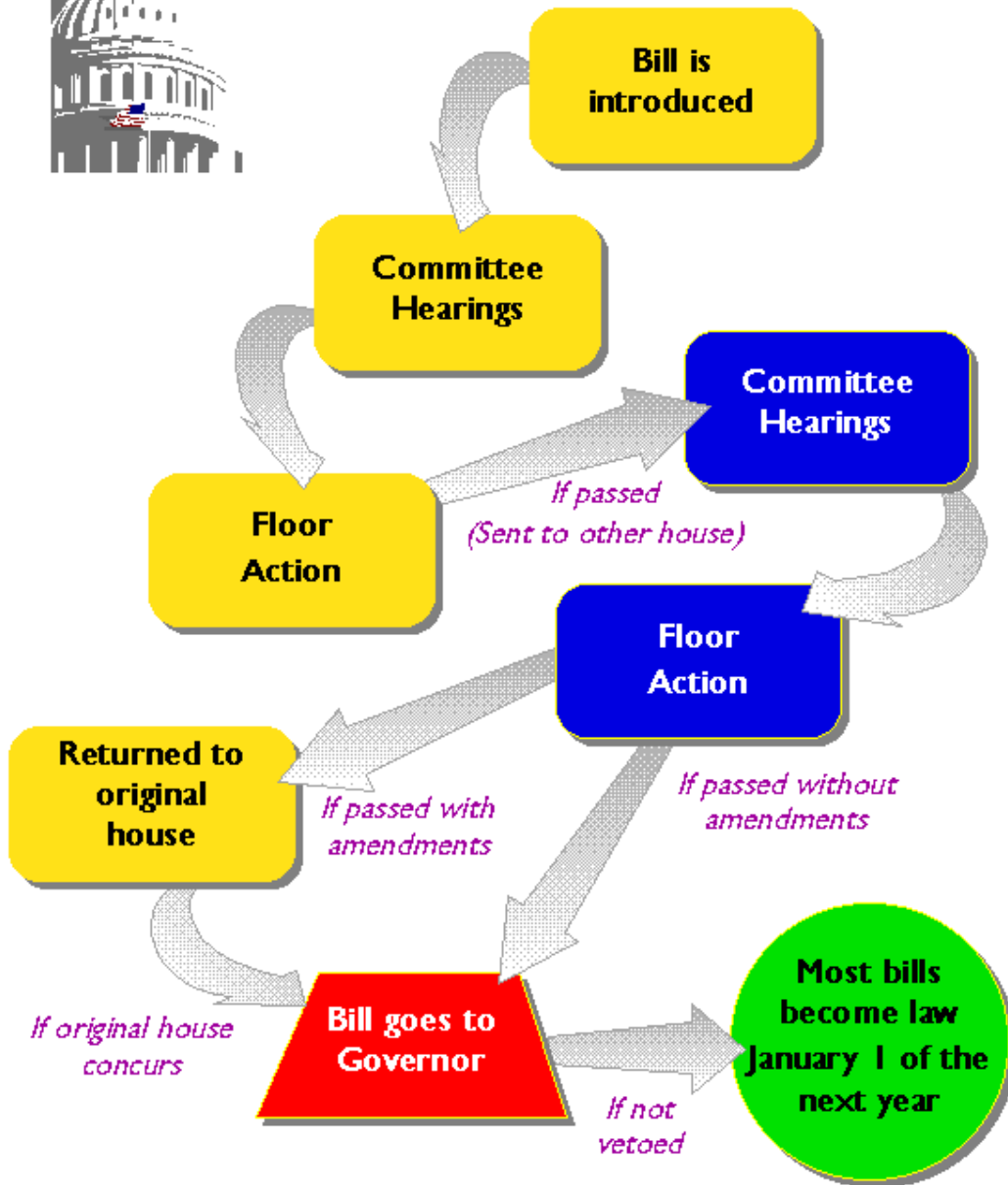
Bills that are passed by the Legislature and approved by the Governor are assigned a chapter number by the Secretary of State. These Chaptered Bills (also referred to as Statutes of the year they were enacted) then become part of the California codes. The California codes are a comprehensive collection of laws grouped by subject matter.



The California Constitution sets forth the fundamental laws by which the State of California is governed. All amendments to the Constitution come about as a result of constitutional amendments presented to the people for their approval.



How a Bill Becomes a Law





SELF-EVALUATION QUESTIONS

1. The California State Legislature is made up of how many houses with what number of members in each?
2. Who can sponsor legislation?
3. When do most new laws go into effect?

How a Regulation is Adopted

California courts have recognized that under the Constitution, the Legislature may by law delegate quasi-legislative powers to a state agency in the Executive Branch so long as adequate safeguards are provided to the State agency. Therefore, every regulatory rulemaking action must be based upon a statutory delegation of rulemaking authority by the Legislature. For instance, Section 12027 gives the Secretary authority to make necessary regulations. This having been said, regulations can be proposed by a State agency by their own initiative, or on the petition of an individual or business using the method described in the Government Code Sections 11340.6 and 11340.7.

Section 12027. Rules and Regulations Authorized

The Director may make such rules and regulations as are reasonably necessary for the purpose of carrying out the provisions of this division.

What does a state agency do once it decides to conduct a rulemaking action?

First, the agency develops the four documents that are necessary to initiate the formal rulemaking process:

- Proposed text of the regulation
- Initial Statement of Reasons explaining the need for the regulation
- Fiscal Impact Statement
- Notice of Proposed Rulemaking

Second, the agency must provide the parties affected by the proposal a 45-day opportunity to submit written, faxed, or e-mail comments on all or part of the proposed rulemaking action. The 45-day period starts when the Notice of Proposed Rulemaking is published in the California Regulatory Notice Register. The Notice of Proposed Rulemaking is also mailed out to those parties who have asked to be on the agency's notice mailing list and is also posted on the agency's Web site. The notice tells interested parties how to obtain access to the proposed text and the Initial Statement of Reasons and who to contact if they have questions or comments. The notice may also schedule a public hearing where oral or written comments may be presented.

A rulemaking agency must summarize and respond on the record to timely comments that are directed at the rulemaking proposal or at the procedures followed. The summary and response to comments demonstrate that the agency has

understood and considered all relevant material presented to it before adopting, amending, or repealing a regulation. The agency must either explain how it amended the proposal to accommodate the comment, or explain the reasons for making no change to the proposal. An agency's summary and response to comments are included as part of the Final Statement of Reasons.



A rulemaking agency must transmit a rulemaking action to the Office of Administrative Law (OAL) for review within one year from the date the notice was published in the California Regulatory Notice Register. OAL then has 30 working days in which to review the rulemaking record to determine if it demonstrates that the agency satisfied the five procedural requirements of the Administrative Procedure Act. Those requirements are:

The Authority and Reference Standard – There must be an authority provision in the statute that permits or obligates the agency to adopt, amend, or repeal a regulation. There must also be a law, a court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

The Consistency Standard – The proposed regulation must be in harmony with and not in conflict with existing statutes, court decisions, or other provisions of law.

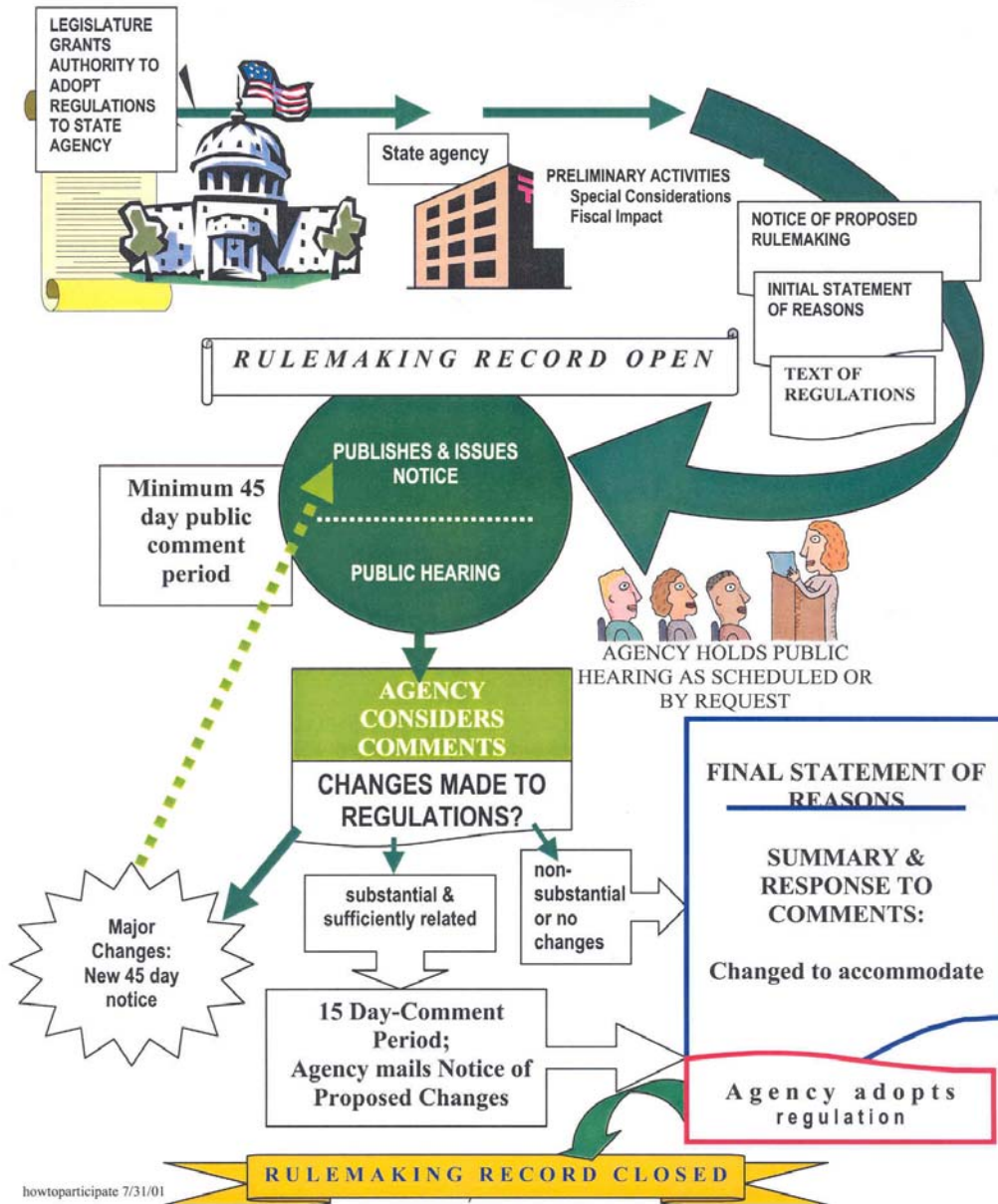
The Clarity Standard – The proposed regulation must be written so that the meaning of the regulation will be easily understood by those persons directly affected by the regulation.

The Non-duplication Standard – The proposed regulation must not serve the same purpose as a state or federal or another regulation. A regulation that repeats or replaces a statute or regulation “serves the same purpose” as the statute or regulation.

The Necessity Standard – The rulemaking record must demonstrate the need for the regulation to effectuate the purpose of the statute, court decision, or other provisions of the law that the regulation implements, interprets, or makes specific.

If the requirements are met, OAL then files the regulation with the Secretary of State's Office and it becomes effective 30 days later.

The Rulemaking Process





SELF-EVALUATION QUESTIONS

1. What State office has the oversight authority for regulations?
2. What is the length of time required for the initial public comment period for a proposed regulation?

Where Weights and Measures Regulations Come From

The Division of Measurement Standards has been given the authority by the Legislature to adopt regulations in order to carry out the enforcement of Business and Professions Code, Division 5 (Section 12027). California weights and measures regulations are found in the California Code of Regulations, Title 4, Division 9. Some of the regulations are developed within the Division, and others are adopted by reference to another organization's standards, publications, or handbooks as specified in the particular statute. The following are organizations that are utilized for that purpose.

American Society for Testing and Materials

The American Society for Testing and Materials (ASTM) Committee D2 (Petroleum Products) and D 15 (Engine Coolants) was organized in 1898 and has grown into one of the largest standards development systems in the world. ASTM is a not-for-profit organization that provides a forum for producers, users, ultimate consumers,



and general interest (government regulators and academia) to meet on common ground and write standards for materials, products, systems, and services. From the work of 132 standards writing committees, ASTM publishes standard test methods, specifications, practices, guides, classifications, and terminology. ASTM's standards development activities encompass metals, paints, plastics, textiles, petroleum products, engine coolants, construction, energy, the environment, consumer products, medical services and devices, computerized systems, electronics, and many other areas. Technical and research work is done voluntarily by 32,000 technically qualified ASTM members located throughout the world. More than 10,000 ASTM standards are published in the 71 volumes of the Annual Book of ASTM Standards.

Business and Professions Code Sections 13440, 13450 and 13710.

National Institute of Standards and Technology

The National Institute of Standards and Technology (NIST), originally founded as the National Bureau of Standards in 1901, was re-established in 1988 by Congress to assist industry in the development of technology needed to improve product quality, to modernize manufacturing processes, to ensure product reliability, and to facilitate rapid commercialization of products based on new scientific discoveries. NIST works

to strengthen U.S. industry's competitiveness, advances in science and engineering, improve public health and safety, and the environment. One of the agency's basic functions is to develop, maintain, and retain custody of the national standards of measurement, and to provide the means and methods for comparing standards used in science, engineering, manufacturing, commerce, industry, and education with the standards adopted and recognized by the Federal Government.

Business and Professions Code Sections 12107, 12211 and 12609.

National Conference on Weights and Measures

The National Conference on Weights and Measures (NCWM) committees, acting at the request of the Conference or upon its own initiative, prepare with the technical assistance of NIST proposed amendments or additions to the material previously adopted by the Conference. Such revisions, amendments, or additions are then presented to the Conference as a whole. This provides a forum where weights and measures officials and representatives of interested manufacturers, industries, consumer groups, and others discuss them. Eventually the proposals of the Committee, which may have been amended on the floor, are voted upon by the voting body that is made up of State and local weights and measures officials from all parts of the United States. The voting procedures adopted by the NCWM in 1978 require a national consensus on all issues adopted by the Conference. An amendment or addition is adopted when a majority of the State's representatives and other voting delegates vote for approval.



The purpose of these Uniform Laws and Regulations is to achieve, to the maximum extent possible, standardization in weights and measures laws and regulations among the various States and local jurisdictions in order to facilitate trade between the States, permit fair competition among businesses, and provide uniform and sufficient protection to all consumers in commercial weights and measures practices. All of the Uniform Laws and Regulations are recommended by the NCWM for adoption by States when reviewing or amending their official laws and regulations in the areas covered. A similar recommendation is made with regard to the local jurisdictions within a State in the absence of the promulgation of such laws and regulations at the State level.

The various committees of the NCWM provide a mechanism for consideration of amendments or additions to the various NIST Handbooks (Handbook 44, Handbook 130, and Handbook 133). The Constitution of the NCWM requires that its officers and Committees observe the principles of due process for the protection of the rights

and interests of affected parties. Specifically, it requires reasonable advance notice of contemplated studies, issues to be considered for action, and tentative or definite recommendations for conference vote, and provides that all interested parties have an opportunity to be heard.

Anyone introducing an issue to one of the committees shall use the regional weights and measures associations to initially consider its merits. Using the regional associations ensures discussion and evaluation of issues at the grass-roots level by involving the regional members in the development, evaluation, and justification of proposals. The regions include the Central, Northeastern, Southern, and Western Weights and Measures Associations. All issues to be considered by the Committees for action at the upcoming Interim Meeting must be submitted in writing to the Committee by November 1. Any issue approved by at least one regional association and received by the November 1 deadline will be automatically placed on the Committee's Interim Meeting Agenda. The NCWM has two meetings per year, the interim meeting in January where the proposals are discussed and worked up into voting items, and the conference in July where the proposals are voted upon.

Western Weights and Measures Association

The Western Weights and Measures Association (WWMA) is made up of weights and measures officials for the following states: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Ideas for changes to weights and measures regulations can come from many different places. In California, it may be the regional deputy sealer groups, the regional sealer groups, the California Agricultural Commissioners and Sealers Association (CACASA), the Division of Measurement Standards, or national citizens. Once an idea is developed, it can then be presented to the WWMA for consideration. Using the regional association ensures discussion and evaluation of issues at the grass-roots level by involving the regional members in the development, evaluation, and justification of proposals. This is generally where we initiate proposals for changes to the various handbooks that we adopt by reference (Handbook 44, Handbook 130, and Handbook 133).



Anyone can send a proposal for changes to the various handbooks that we adopt by reference (Handbook 44, Handbook 130, and Handbook 133). See example on the following pages.

EXAMPLE (Page 1)

The following is an account of a problem that evolved from a consumer complaint in California.

Changing the Definition of “Contract Sale” in Handbook 44

Fuel distributors have, for many years, been selling self-serve fuel to commercial customers at unattended sites, first using “keylock” and then “cardlock network systems”. This is a credit card system for commercial accounts similar to the familiar Visa and Mastercard credit cards used by the public. A commercial customer would enter into a contract with the operator of the system (e.g. CFN, Pacific Pride), and be supplied with a card that could then be used at fuel distributing centers specifically set up to service these commercial accounts. These “contract sales” are exempt from several weights and measures requirements: unit pricing, price computation, and printed receipt. The typical commercial fuel distribution center uses volume-only dispensers, and does not issue receipts. In addition, because they are non-retail, the sites do not need to post prices as required by Section 13532 of the Business and Professions Code.

In recent years, fuel distributors have expanded these “cardlock” systems into regular retail outlets. This led to the following problem.

A motorist with a contract cardlock card purchased fuel from a price-computing dispenser in a Nevada County gas station. He expected to pay the posted price, but later when he received his bill, he found he had been charged \$0.28 per gallon more than the posted price.

Nevada County brought this to the attention of its area deputy group where after discussion it was voted to send it to CACASA and to bring it to the attention of the Division of Measurement Standards. A subcommittee/working group of deputy sealers and Division personnel was formed.

During the course of their inquiries, the working group determined that the exemptions provided the fueling sites for “contract sales” were erroneously applied. The existing definition of “Contract Sale” in Handbook 44 too narrowly defined what a contract sale was, and did not reflect the contract sales scenarios in use.

Contract Sale. A sale where there is a written agreement stating the price as either a fixed price, a price above cost, or an adjustment from the posted price.

Under the existing definition, for a sale to be a “contract sale” there had to be a written agreement. Extensive research failed to find an existing cardlock contract that referred to price. In most of the contracts, the price is adjusted daily and the customer may either telephone, or log on to a Web site, and check the price that they will pay for the fuel on that particular day.

EXAMPLE (Page 2)

It was determined that the solution was to amend the definition of “contract sale” to address the current “contract sale” scenarios. (The language on the next three pages is exactly as presented to the Specifications and Tolerances (S&T) Committee of the WWMA and how it appeared in the Committee’s interim report.) Suitable language was drafted and a proposal sent to the WWMA (see page 20). The proposal was put on the agenda for the S&T Committee in September 2001.

The item gained the support of WWMA and it was voted to put it on the agenda of the S&T Committee of the NCWM.

The WWMA’s proposal was discussed at the NCWM interim meeting in January 2002 and the S&T Committee decided to move the item forward as a voting item to the full conference in July 2002 (see page 22). Here the proposal was slightly modified and passed. In January 2003, Handbook 44 included the change and as this handbook has been adopted by reference in California, our regulations immediately reflected the change. The definition now states.

Contract sale. A sale where a written agreement exists, prior to the point of sale, in which both buyer and seller have accepted conditions of the sale. Examples include, but are not limited to: e-commerce, club sales, or pre-purchase agreements.

As you can see a problem arose, a solution was developed and submitted to the WWMA then to the NCWM, voted on and Handbook 44 was changed.

The resulting change to Handbook 44 did not actually address the consumer’s original complaint but corrected a problem that was not apparent until officials took a closer look at the whole issue.

The traditional division between retail and commercial outlets is blurring. Commercial fueling sites are accepting Visa and Mastercard credit cards and many retail fuel businesses are accepting cardlock credit cards. These changes are bringing other problems that will necessitate additional changes to Handbook 44.

This example shows the steps taken to make a change to a conference handbook. Any official can initiate this relatively simple process. If you see the need for a change in any of the conference handbooks that we adopt, you are encouraged to follow this method.

EXAMPLE (Page 3)**PROPOSAL TO WWMA STANDING COMMITTEE****COMMITTEE:** Specifications and Tolerances**DATE:** 5/21/2001**CONTACT PERSON:** Dennis Johannes**TELEPHONE:** (916) 229-3000**JURISDICTION/COMPANY:** California**PROPOSAL:** Amend the definition of “**Contract Sale**” in Handbook 44 as follows:

Contract Sale. A sale where an agreement exists, prior to the point of sale, in which both buyer and seller have accepted conditions of the sale. Examples include, but are not limited to: e-commerce, club sales, or pre-purchase agreements. [3.30]

Contract Sale. A sale where there is a written agreement stating the price as either a fixed price, a price above cost, or an adjustment from the posted price.

JUSTIFICATION: A broader and more generic definition of “Contract Sale” is necessary to meet the needs of the modern marketplace. From the beginning of use of keylock/cardlock systems, Weights and Measures Officials have exempted them from several of the Liquid-Measuring Device sections in Handbook 44, because we considered the way they were used to be a “contract sale”. Currently, we exempt these systems from four of the requirements in the Liquid-Measuring Device Code: (1) Section 3.30. S.1.6.4.1.(b) “Unit Price”. (2) 3.30. S.1.6.5.(a) “Money-Value Computations”. (3) 3.30. S.1.6.7 “Recorded Representations”. (4) 3.30. UR.3.3.(a) “Computing Device”.

The current definition of Contract Sale is “A sale where there is a written agreement stating the price as either a fixed price, a price above cost, or an adjustment from the posted price.” We have yet to find an existing cardlock contract that makes any reference to the price. In most of the contracts we have seen, the price is adjusted daily and the customer may either call, or log on to a Web site, on any given day and check the price that they will pay for the fuel on that particular day. Additionally, the exemptions provided for contract sales are necessary in e-commerce transactions such as the PriceLine.Com scenario, where each customer would submit a bid for the price that they will actually pay for the fuel, or for the use of “Club Card” discounts, which are becoming increasingly more popular.

EXAMPLE (Page 4)

REASONS FOR: The existing definition of “Contract Sale” too narrowly defines what a contract sale is, and does not reflect the current contract sales scenarios being used.

ADDITIONAL CONSIDERATIONS: Fuel Oil Distributors have been selling self serve motor fuel to commercial customers and private individuals for over thirty years. One of the early systems for self serve fuel, sold from the fuel distributors’ business location was the keylock. This later evolved to the cardlock, which has become the standard for this type of fuel sales. Early on network systems like CFN, Pacific Pride, and others evolved which allowed fuel oil distributors to increase their fuel sales and gave a benefit to the customer by allowing them to purchase fuel using their local cardlock service when out of their own town. Some fuel distributors joined a network system while some have remained as independents. Customers of network systems can now purchase fuel at their local fuel distributor or anyplace displaying their network logo.

The latest change in the cardlock industry is the joining of retail fuel sales and cardlock fuel sales at the same location. In some situations cardlock locations have added card readers accepting traditional credit cards (Visa, MasterCard, etc.) and in other situations, retail stations are accepting cardlock cards (CFN, Pacific Pride, etc.) as well as traditional credit cards.

RETURN TO: Chairman 2001 WWMA S&T Committee

EXAMPLE (Page 5)**Interim Report of the
Committee on Specifications and Tolerances****330-5 V Appendix D; Definition of Contract Sale****Source:** Western Weights and Measures Association (WWMA)**Recommendation:** Amend the definition of “contract sale” in NIST Handbook 44 as follows:

~~contract sale. A sale where there is a written agreement stating the price as either a fixed price, a price above cost, or an adjustment from the posted price. A sale where a written agreement exists, prior to the point of sale, in which both buyer and seller have accepted pricing conditions of the sale. Examples include, but are not limited to: e-commerce, club sales, or pre-purchase agreements. Any devices used in the determination of quantity must comply with NIST Handbook 44. [3.30]~~

Background/Discussion: At its 2001 Annual Meeting, the WWMA agreed that the availability of fuel at reduced prices through e-commerce or the use of club cards necessitates a broader and more generic definition of “contract sale” to meet the needs of the modern marketplace. Many jurisdictions exempt keylock or cardlock systems, from several of the Liquid-Measuring Device Code sections in NIST Handbook 44. Those jurisdictions consider the use of keylock or cardlock systems to be a form of contract sale in applications where the customer receives a monthly billing. Currently, systems used for contract sales are exempt from several requirements in the Liquid-Measuring Device Code including Paragraphs S.1.6.4.1.(b) Unit Price, S.1.6.5.(a) Money-Value Computations, S.1.6.5.4. Selection of Unit Price, S.1.6.7. Recorded Representations, UR.3.2. Unit Price and Product Identity, and UR.3.3.(a) Computing Device.

Many existing cardlock contracts only stipulate the agreement for receiving the card. The contracts make no reference to the price of fuel and do not meet the existing NIST Handbook 44 definition for contract sales. In most cardlock contracts, the price is adjusted daily and the customer may either call or log on to a Web site to check the fuel price on that particular day. Additionally, the above exemptions provided for contract sales are necessary in e-commerce transactions such as fuel purchases through PriceLine.com where each customer submits a bid for the fuel price that they are willing to pay. Another example is the use of the increasingly popular club cards that provide a discount from the posted price. The WWMA recommended that the definition of “contract sale” in NIST Handbook 44 be amended as follows:

~~contract sale. A sale where there is a written agreement stating the price as either a fixed price, a price above cost, or an adjustment from the posted price. A sale where an agreement exists, prior to the point of sale, in which both buyer and seller have accepted conditions of the sale. Examples include, but are not limited to: e-commerce, club sales, or pre-purchase agreements. [3.30]~~

At its October 2001 Annual Meeting, the Southern Weights and Measures Association (SWMA) modified the WWMA proposal to clarify that contracts must include pricing conditions such as a club member discount or an e-commerce transaction price. The SWMA is concerned that devices designed for non-commercial applications are sometimes installed in keylock or cardlock systems and believes that devices used for contract sales must still comply with other NIST Handbook 44 requirements. The SWMA recommended that the proposal move forward as a voting item.

At the NCWM 2002 Interim Meeting, the Committee heard support for the SWMA proposed definition of contract sale and agreed with the SWMA that devices used for contract sales must comply with NIST Handbook 44. The Committee recommends the SWMA proposal as shown in the recommendation above for a vote at the 2002 NCWM Annual Meeting.

The following Business and Professions Code Sections specifically reference other organization’s standards, handbooks, or acts.

<p>12107</p>	<p>The director shall establish tolerances and specifications and other technical requirements for commercial weighing and measuring. In doing so, <i>the director shall adopt, by reference, the latest standards as recommended by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 44 "Specifications and Tolerances, and other Technical Requirements for Weighing and Measuring Devices,"</i> except as specifically modified, amended, or rejected by regulation adopted by the director.</p>
<p>12211</p>	<p>...In adopting those regulations, <i>the secretary shall adopt by reference the package checking procedures recommended by the National Conference on Weights and Measures and published in the current edition of the National Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods,"</i> and any subsequent amendments thereto, except insofar as those requirements are specifically modified, amended, or rejected by a regulation adopted by the secretary...</p>
<p>12609</p>	<p>The director shall adopt necessary regulations to carry out the purpose of this division and for the testing of packages to verify the net quantity statements. In adopting these regulations, <i>the director shall adopt by reference the packaging and labeling requirements recommended by the National Conference on Weights and Measures and published in the current edition of the National Institute of Standards and Technology Handbook 130, Uniform Packaging and Labeling Regulation,</i> except insofar as those requirements are specifically modified, amended, or rejected by regulation by the director. The regulations shall include exemptions from full compliance with this chapter for good and sufficient reasons. Any exemptions affecting consumer commodities shall be in conformance with exemptions permitted by federal regulations...</p>
<p>12610</p>	<p>The director may promulgate regulations similar to those promulgated by the Secretary of Health, Education, and Welfare or the Federal Trade Commission pursuant to the Fair Packaging and Labeling Act (P.L. 89-755; 80 Stats 1296; 15 U.S.C. 1451-1461)...</p>
<p>13440</p>	<p>(a) The department shall establish specifications for automotive spark-ignition engine fuels. <i>The department shall adopt by reference the latest standards established by a recognized consensus organization or standards writing organization such as the American Society for Testing and Materials (ASTM) or the Society of Automotive Engineers (SAE),</i> for automotive spark-ignition engine fuel, except that no specification shall be less stringent than required by any California state law.</p>

<p>13450</p>	<p>The department shall establish specifications for compression-ignition engine fuel, kerosene, and fuel oil. <i>The department shall adopt by reference the latest standards established by a recognized consensus organization or standards writing organization such as the American Society for Testing and Materials (ASTM) or the Society of Automotive Engineers (SAE),</i> for compression-ignition engine fuels, kerosene, and fuel oil, except that no specification shall be less stringent than required by any California state law.</p> <p>(a) Diesel fuel shall meet the specifications set forth in ASTM D-975, except that sulfur specifications shall not exceed the maximum specified by any California state law.</p> <p>(b) Kerosene shall meet the specifications set forth in ASTM D-3699.</p> <p>(c) Fuel oil shall meet the specifications set forth in ASTM D-396, except that sulfur specifications shall not exceed the maximum specified by any California state law.</p>
<p>13710(a)</p>	<p>(1) The department shall establish specifications for engine coolants and antifreeze, and prediluted engine coolants and prediluted antifreeze that promote the public safety in the operation of motor vehicles.</p> <p>(2) In addition to paragraph (1), if the American Society for Testing and Materials adopts standards for recycled engine coolants and antifreeze, the department, on or before January 1, 2002, shall establish specifications for recycled engine coolants and antifreeze, and recycled prediluted engine coolants and antifreeze that promote the public safety in the operation of motor vehicles.</p> <p>(3) <i>The chemical, physical, and performance specifications for engine coolants and antifreeze and prediluted engine coolants and prediluted antifreeze under paragraphs (1) and (2) shall not fall below the minimum specifications, if any, established by the American Society for Testing and Materials.</i> Engine coolant and antifreeze shall not contain, after dilution with 30 percent water and subsequent mixing, visually identifiable suspended matter or sediment. Prediluted engine coolant and prediluted antifreeze shall not contain, after mixing, visually identifiable suspended matter or sediment.</p> <p>(4) For purposes of this subdivision, the department shall adopt testing procedures and shall specify a virgin reference coolant that it finds is recognized as standard in the industry.</p>
<p>13710(c)</p>	<p>The department shall establish specifications for brake fluid that promote the public safety in the operation of automotive vehicles. <i>The specifications for brake fluid shall not fall below the minimum specifications established by the National Highway Traffic Safety Administration of the United States Department of Transportation.</i></p>



SELF-EVALUATION QUESTIONS

1. Name three of the five organizations from which the Division of Measurement Standards adopts weights and measures regulations by reference.
2. What is the purpose of the Uniform Laws and Regulations adopted by the National Conference on Weights and Measures?
3. How do ideas for changes to the Uniform Laws and Regulations get from California to the National Conference on Weights and Measures?



GLOSSARY

A LISTING OF TERMINOLOGY AND ACRONYMS MOST COMMONLY USED BY WEIGHTS AND MEASURES OFFICIALS.

ASTM – American Society for Testing and Materials

CACASA – California Agricultural Commissioners and Sealers Association

California Business and Professions Code – A body of California law, first enacted in 1937, which in general governs the manner in which businesses and professionals conduct their business. When used in these modules, specifically Division 5 pertaining to Weights and Measures and Petroleum Products.

California Code of Regulations - A body of California rules that explains, clarifies, and carries out provisions of California law. When used in these modules, specifically Title 4 Division 9.

Legislative Counsel – A nonpartisan public agency that drafts legislative proposals, prepares legal opinions, and provides other confidential legal services to the Legislature.

NCWM – National Conference on Weights and Measures

NIST – National Institute of Standards and Technology

Notice of Violation – Written notification of a violation to the violator.

OAL – Office of Administrative Law

Regulation – A rule or order having the force of law issued by the Executive Branch of Government.

Statute – A law enacted by a Legislature.

WWMA – Western Weights and Measures Association



BIBLIOGRAPHY AND REFERENCES

American Society for Testing and Materials Web site:

www.astm.org

California Legislative Counsel Web site:

www.legislativecounsel.ca.gov

California State Assembly Web site: www.assembly.ca.gov

California State Senate Web site: www.sen.ca.gov

National Conference on Weights and Measures Web site:

www.ncwm.net/main.html

National Institute of Standards and Technology Web site:

www.nist.gov

Office of Administrative Law Web site: www.oal.ca.gov



SELF-EVALUATION ANSWERS

Segment 1

1. The California State Constitution separates the government into three branches:

The Legislative – This branch is responsible for making laws.

The Executive – This is the branch of the government that carries out the laws.

The Judicial – This is the branch that is responsible for the courts and the interpretation of the laws.
(Page 2)

2. A law is a body of rules, adopted by the Legislature, which requires you to do something or prohibits you from doing something. (Page 2)
3. A regulation is a body of guidelines that interprets, implements, or clarifies a law, adopted by an agency responsible for enforcing that law. (Page 3)

Segment 2

1. Two houses, the Senate with 40 members and the Assembly with 80 members. (Page 6)
2. A private citizen, a special interest group, or industry. (Page 6)
3. Most new laws take effect the 1st of January of the next year. (Page 8)

Segment 3

1. The Office of Administrative Law. (Page 12)
2. The initial comment period is 45 days. (Page 11)



SELF-EVALUATION ANSWERS

Segment 4

1. The American Society for Testing and Materials

The National Conference on Weights and Measures

The National Institute of Standards and Technology

The Federal Trade Commission

The National Highway Traffic Safety Administration – United States Department of Transportation (NHTSA – USDOT)
(Page 23–24)

2. The purpose is to achieve standardization in weights and measures laws and regulations among the various states and local jurisdictions in order to facilitate trade between the states, permit fair competition among businesses, and to provide uniform protection to consumers in commercial transactions. (Page 16)
3. Ideas for changes can come from many different places. They may come from the California Regional Sealer/Commissioner Area Groups through the California Agricultural Commissioner and Sealers Association or the Division of Measurement Standards. These proposals are then presented to the Western Weights and Measures Association, where if they are approved, are then forwarded to the NCWM for discussion and voting. (Page 17)



We would appreciate your taking a few moments to complete our training evaluation feedback form. We welcome your comments and any suggestions you might have regarding Training Module 2. You may E-mail your response to us at DMS@cdfa.ca.gov or mail to Division of Measurement Standards at 6790 Florin Perkins Road, Suite 100, Sacramento CA 95828-1812.

1. Did this module fulfill your expectations?

2. What did you like/dislike about this module?

2. What areas would you like to see improved?

3. What specific changes, if any, would you recommend?

4. How could this module be better organized to make it easier to follow and learn from?

5. Was this module too basic or too advanced for someone with an entry level background in weights and measures?

7. Additional comments or suggestions.