

HELPING CONSUMERS GET CORRECT WEIGHTS AND MEASURES

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The contribution of the Federal Government toward "helping" consumers get correct weights and measures" has been both direct and indirect. Most of the assistance, however, has been indirect, rendered through officers of the States and their political subdivisions, engaged in the enforcement of State laws and regulations and city ordinances on weights and measures.

At the State level and below, weights and measures controls are exercised under the general police power of the State. These controls are, in general, very broad within the area of "commercial" quantity determination. The term "commercial quantity determination," as used in weights and measures laws and regulations, means the determination of quantity upon which is based the purchase or sale of a commodity or service and those quantity-checking determinations upon the basis of which claims for shortages may be made. Other quantity determinations are considered as "noncommercial," by weights and measures law administrators.

In the early days of weights and measures enforcement, the preponderance of emphasis was placed upon the testing of and control over the mechanical instruments used in commercial quantity determinations. It was felt by the representatives of government, that if weights and measures administrators saw to it that the devices were accurate, the individual consumer could protect himself by watching to see that these devices were used properly. Those were the days when the theory of caveat emptor prevailed. In more recent years, and with growing emphasis, weights and measures officials consider it necessary and proper to devote 50 per cent or more of their time to the "supervisory" aspects of their duties--that is, in seeing to it that correct devices are properly used. The period of caveat emptor has ended, in the eyes of the weights and measures official. His aim is that all commercial quantity determinations be accurately made and represented. Specifically, he tries to make certain that, whether the determination is made by the seller or the buyer, whether it is made at the time of or in advance of the sale, the measurement is accurate. He uses his every resource to make sure that both parties in a transaction receive the amount that they expect and that has been represented.

Weights and measures protection is not for the consumer alone; it extends to and serves also producers, distributors, and retailers. In a very fine sense, the weights and measures official renders his greatest service and protection to the consumer group by maintaining a business environment in which equity prevails. This can be explained and justified by the fact that it is

recognized that, at least in a vast majority of instances, the consumer is less able to protect his own interests than are other groups involved in commercial quantity determinations. This being the case, the natural thing is for a public official to extend every reasonable effort to help him.

Any law enforcement program, if it is to perform its intended function, must be built on the foundation of a good statute. In weights and measures, practically all present State statutes are based on the Model State Weights and Measures Law, that is recommended by the National Conference on Weights and Measures and the National Bureau of Standards. (Later reference will be made to the National Conference on Weights and Measures to explain its place in the consumer protection pattern.)

The ideas, comments, and recommendations included in this paper are based on experience in weights and measures administration, and it is believed that they represent a consensus of weights and measures officials generally. In many instances these are supported by formal actions of the National Conference on Weights and Measures and legislative and administrative acts at the State level.

Without an adequate law, it is impossible to develop a comprehensive system of weights and measures supervision which will successfully withstand the vicissitudes of the complicated and strenuous commercial life of today, or to bring about the full measure of protection envisioned in weights and measures supervision. It is of primary importance, therefore, that this basic law be carefully planned along broad lines to meet the exigencies of modern business, that it be executed with precision and with an attention to detail which will insure a cohesive and substantial whole, and that it be reinforced by such provisions for administrative authority and penalties for violations of its provisions as will make possible effective enforcement.

One of the first essentials of a weights and measures statute is the establishment of the standards of length, mass, and capacity which are to be followed throughout the State and provide for the physical copies of these standards necessary for purposes of enforcement. Provisions must also be made for the verification and the periodic reverification of these standards so that their initial accuracy may be established and their integrity maintained.

The powers and duties of all weights and measures officials should be stated in unmistakable terms. The powers granted should be broad so that the officials may have ample authority. The officer should have full and complete authority over the mechanical equipment used in commercial weighing and measuring. He should likewise have jurisdiction over the use of that equipment. He should be empowered to reweigh and remeasure commodities and to carry on all necessary investigations incident to his duties. He

should have access to all places where his presence is demanded for purposes of inspection, testing, or supervision.

To be effective the weights and measures statute should be provided with penalties for violations of its provisions, and these penalties should be of a character to discourage violators in a forceful way. Short-weight, short-measure, and other frauds prohibited by weights and measures law are serious offences and should not be lightly treated.

In addition to these rather general provisions, certain specific matters require special treatment. The method of sale of particular commodities or classes of commodities and services should be prescribed. The standardization of package sizes of certain staple commodities is deemed highly desirable. Definite rules should be laid down in relation to the marking of packages with statements of their net contents, and the marketing of packages which are slack-filled or otherwise deceptive or misleading in appearance should be prohibited. The principle of sale by "net" instead of by "gross" weight should be established. There should be a general prohibition of misleading representations of quantity and price of commodities or services sold or offered for sale. Necessary definitions of terms and units should be included in the law.

Another very important element of a weights and measures law is that the chief weights and measures officer of the State should be empowered to make reasonable rules and regulations for the enforcement of the statute and for the guidance of all weights and measures officers in the State. Specific authority should be granted for his promulgation of specifications and tolerances for commercial weighing and measuring devices, designed to insure accurate and reliable commercial equipment, free from features conducive to the perpetration of fraud.

Under the law is developed an enforcement program embracing people and their activities. The enforcement program of any weights and measures department should be broad in its scope, comprehensive in its application, and properly balanced between mechanical and supervisory activities. All commercial weighing and measuring devices in a jurisdiction should be inspected and tested at intervals indicated by their design, conditions, and use. In a majority of instances, this will be at least once each year. The program should include a thorough inspection and test of each new commercial device before it is placed in service. Faulty devices should not be permitted to be sold and used in the jurisdiction. Surprise or unannounced visits by officials, to commercial establishments, to observe the manner of use of commercial devices, should be resorted to as often as practicable.

If a weights and measures department is to give full and adequate protection to consumers, a well-planned and properly

organized program, relative to the supervisory aspect of its duties, is essential. The check-weighing and check-measuring of pre-packaged commodities is constantly increasing in importance and in magnitude. Continuous effort must be devoted to the checking of prepackaged commodities for quantity of contents and adequacy of labeling. The quantity statement on a label should be plain, conspicuous, legible, and meaningful to the prospective purchaser. A quantity statement that is meaningless, or that may be misleading, is without value, and should not be allowed.

A well-balanced weights and measures program, properly executed will result in attaining these desirable goals. The consumer himself should accept certain responsibilities in a weights and measures program. He can aid materially by reporting to the official any matter coming to his attention which, in his opinion, indicates a failure to comply with all legal requirements or that he does not fully understand. Such cooperation on the part of the consumer is always welcome and, in most instances, greatly appreciated by the official.

The total program of a city or county weights and measures department is very similar to the program of a State department. Full and complete coordination and cooperation between State and local departments is essential for a fully effective program. In smaller local jurisdictions, there are some areas of operation in which it may not be economically sound for a city or county department to operate independently. For instance, in the testing of large-capacity scales, wholesale liquid-measuring devices, farm milk tanks, and the like, where special and rather expensive testing equipment is necessary, it may not be economically practicable for a local jurisdiction to obtain such equipment. In such instances, the State department can assist the smaller local jurisdictions in this mechanical phase of their operation. Likewise, a State department can be of invaluable assistance to the local official in the supervisory phase of his program. The State department is in better position to follow up, at the source of supply, on various violations discovered by the local officer. Team work between State and local weights and measures officials is imperative for efficient and effective results.

To clearly establish the difference between the mechanical and the supervisory activities involved in a weights and measures program, it may be repeated that the mechanical activities are concerned with the control of the mechanical devices and instruments employed in making commercial determinations of quantity. The real purpose of this activity is first to see to it that accurate and dependable weighing scales, gasoline pumps, taximeters, fabric-measuring devices, and the like are supplied by the manufacturers of such equipment. This part of the program is also designed to give assurance to both business and consumer that once accurate and dependable devices have been obtained, they are properly maintained throughout their periods of use.

The supervisory activities of a weights and measures department involve policing to see that the accurate and adequate weighing and measuring devices are properly used. This involves the check-weighing and check-measuring of commodities, after a commercial determination of quantity has been made, to ascertain whether or not the merchant's quantity determination was correct. In the case of prepackaged commodities, this activity is relatively simple. Since prepackaged merchandise is required by law to carry a statement of the net quantity of contents, the official can enter a place of business and proceed to check-weigh or check-measure representative samples of prepackaged commodities on hand. In the case of purchases weighed at the time of sale, a different approach must be taken by the official. He intercepts and checks purchases of this kind while they are in process of delivery by the vendor or in possession of the purchaser. He also directs a program of test or try-out purchases by members of his own staff, to simulate the conditions of normal purchasing by the public.

In some areas of commerce, check-weighing or check-measuring processes are difficult to accomplish. In the sale of livestock at an auction yard, for example, the animal or animals to be check-weighed must either be pre-weighed, or run back over the scale relatively soon after the commercial weighing. This is also true in the sale of live poultry and various other items.

Up to this point, discussion has centered about the operations of State, county, and city weights and measures activities. With all of these being carried on at the State, county, and city levels, there may arise the question, "What need is there for federal participation, and just what contribution is made by federal agencies?" A partial answer is provided by a recent publication of the National Bureau of Standards. This is Circular 593, entitled "The Federal Basis for Weights and Measures," comprising a historical review of federal legislative effort, statutes, and administrative action in the field of weights and measures in the United States. (Available at 30 cents per copy from the Superintendent of Documents, Washington, D. C.) Consumers should find this publication both interesting and helpful.

The most basic, and probably one of the most important contributions to weights and measures administration that has been made by the federal government thus far, was the adoption for use by the government of adequate uniform standards of weight and measure and the later furnishing of copies of these standards to each of the several States. Another major contribution by the federal government was the enactment of food and drug laws. These laws require, as you know, that a statement of the net quantity of contents of packages of foods, drugs, and cosmetics moving in interstate commerce be declared on each such package. The standard container laws and the livestock and poultry laws, which are administered by the U. S. Department of Agriculture, are also

major contributions. The weights and measures program of the National Bureau of Standards, which has continued without interruption since the creation of the Bureau in 1901, is another significant contribution by the federal government.

The National Bureau of Standards is the principal federal agency dealing with State and local weights and measures officers, and such dealings are at present channeled through the Bureau's Office of Weights and Measures. This office has evolved from activities carried on from about 1905 to the late 1940's in the Bureau's Division of Weights and Measures.

Soon after its creation in 1901, the National Bureau of Standards started preliminary investigations into the then prevailing conditions in commercial quantity determination throughout the nation. As a result of the information thus obtained, the Director of the National Bureau of Standards decided to invite each of the States to send delegates to the Bureau for the purpose of discussing programs of weights and measures control in this country. This first meeting was held at the National Bureau of Standards on January 16 and 17, 1905. Eight States and the District of Columbia responded to the Director's invitation and attended this first Conference. Since this very meager beginning, some 54 years ago, the Conference has continued in existence and has grown in stature and importance until, at the 43d National Conference in 1958, official delegates from 39 States, the District of Columbia, Hawaii, and Puerto Rico were present to participate. With the exception of brief periods during the two World Wars and the depression, the Conference has met annually in Washington, D.C.

The principal areas of present activity in the National Conference on Weights and Measures are the development of Model Laws, regulations, specifications and tolerances for devices, new field testing equipment, test procedures, and uniform administrative policies. The Conference acts largely through its three standing committees, the Committee on Laws and Regulations, the Committee on Specifications and Tolerances, and the Committee on Education. As circumstance dictate, special committees are appointed. Two such special committees are functioning at this time.

The present basic relationship between the National Bureau of Standards and the National Conference on Weights and Measures is sponsorship by the Bureau as a means for the promotion of uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States for commercial weighing and measuring. (This sponsorship is exercised under authority of that portion of the organic federal act under which the Bureau is authorized to undertake "cooperation with the States in securing uniformity in weights and measures laws and methods of inspection.")

Within the limitations of the funds available, the National Bureau of Standards assists the Conference by supplying technical information, guidance, and secretarial services, to the end that the Conference may operate effectively, constructively, and with fairness toward all affected interests.

The Bureau publishes and distributes reports of the proceedings of the meetings of the Conference, reports of Conference Committees, and Model Laws, Regulations, Specifications, and Tolerances adopted by the Conference.

In exercising its cooperation with the Conference, the National Bureau of Standards acts primarily through the Office of the Director and specifically through the Office of Weights and Measures.

The National Bureau of Standards has, over the years, been consistent in its efforts toward promoting uniformity and adequacy in State weights and measures requirements. The National Conference on Weights and Measures has been a major medium through which the desired results have been obtained. To further this cooperative activity, the National Bureau of Standards has published numerous Handbooks, Circulars, and Miscellaneous Publications in the field of weights and measures administration. These publications have been used as the principal source of information by weights and measures officials, equipment manufacturers, and industry. The Bureau has consistently participated in, at the invitation of the States, numerous weights and measures conferences and meetings of various types. Personal visits to State and local offices have been made by Bureau personnel. Also, in some instances, and at the request of the jurisdiction involved, statewide surveys have been made and reports and recommendations to the State have been developed by the National Bureau of Standards.

A very popular and growing activity of the Office of Weights and Measures is its participation in the conduct of technical training schools for State and local weights and measures officers. As a result of these schools, more nearly uniform enforcement activities throughout the nation result. The Bureau is currently in the process of setting up special facilities for technical training in this area on the Bureau grounds here in Washington.

Let me emphasize for benefit of the record that the National Bureau of Standards has no regulatory authority in the weights and measures field. Its entire weights and measures activity is in cooperation with the States and their political subdivisions and the activities of the Office of Weights and Measures, and of the Metrology laboratories, are designed to render assistance to the State and local authorities.

By making its services, assistance, and advice available to the States, the National Bureau of Standards has made a very definite and valuable contribution to the weights and measures protection of the consumer, even though this contribution is indirect. The several other federal agencies mentioned earlier have, likewise, made major contributions within the restricted fields of their statutory responsibilities.

It is worthy of emphasis, in conclusion, that with respect to weights and measures protection the role of the consumer should not be that of a passive recipient of benefits, but rather that of an active ally of the constituted authorities. There is much that the consumer can do to help himself, and more, perhaps, that he can do to help weights and measures officers supply effective protection for him in their official capacities.

It would be quite helpful to the consumer himself, and also a valuable aid to efficient weights and measures enforcement, if consumers could be encouraged to obtain a rather complete general knowledge of the weights and measures laws and regulations in effect in their particular communities, to become acquainted with their weights and measures officials, and to familiarize themselves with the purposes and the activities of these offices. The consumer has resources available to him to buy intelligently, to check quantities on many of his purchases, to observe statements on labels with extreme care. He can and should confer with his weights and measures officer when questions arise, and register complaints when quantitative errors are made or improper practices are observed. He can actively support bills for improved weights and measures laws and adequate appropriations for equipment and operating funds, and assist the weights and measures officer in carrying on a public educational program. Doing these things will be in the individual consumer's own interest, and will pay sizable dividends to all consumers.

Weights and measures officials, by and large, are more energetic in discharging their responsibilities than in publicizing their activities. For this reason, much of the consuming public is being protected in the quantity aspects of its purchases without knowledge that protection is being afforded. Still better protection can be realized if consumers, as individuals and as organized groups, will work with the weights and measures inspectors in a joint effort to bring about in every commercial transaction the accurate determination and representation of quantity.