



National Conference on Weights and Measures
"That Equity May Prevail"

NCWM Package and Labeling Subcommittee (PALS)

Quantity and Price Information in an E-Commerce Future

Chris Guay
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Meeting Agenda/Objectives

- Who/What is NCWM PALS?
- Information about e-Commerce
- Does Anything Need to Change?
- Possible Elements of Updated Model Regulation
- Next Steps



NCWM Package and Labeling Subcommittee

- Comprised about equally of regulatory officials and industry voting representatives, but open to all interested individuals
- Provides recommendations and support for NCWM on packaging and labeling issues.
- Identifies and makes recommendations on emerging issues/questions related to packaging and labeling
- Develops NCWM positions and recommendations for Federal and State agencies (e.g., FTC, FSIS, TTB Net Content regulations).



Package & Labeling Subcommittee Voting Members

- Chris Guay, Chairman (Procter & Gamble)
- Angela Godwin (Ventura County, CA)
- Frank Greene (Connecticut)
- Nicholas Owens (Stark County, OH)
- Hal Prince (Florida)
- Ann Boeckman (Kraft Heinz)
- Zina Juroch (Juroch Consulting)
- Krister Hard af Segerstad (IKEA North America)
- Heidi Robinson (v) (Publix)
- Dave Sefcik, Technical Advisor (NIST)



E-Commerce Question



What % of US households are Amazon Prime Members?

**64%
(2017)**



Percent of Consumer Products Being Sold Online

Country	2017	2018
China	21.1%	28.1%
United States	4.0%	5.4%
United Kingdom	9.2%	10.8%
Germany	8.2%	9.1%
Korea	5.8%	7.0%
Japan	31.1%	30.7%
France	9.4%	11.6%
India	3.2%	4.4%
Brazil	2.4%	2.7%



E-Commerce?



NOT EXACTLY



Challenges

- Packages not intended to be shipped
- Packages created only for shipping and not for placement on retail shelves
- Different Consumer Engagement
- Consumer No Longer Sees Product being purchased
- Enforcement Challenges for Products Purchased On-Line
- Lack of clear requirements specific to e-commerce



Current PALS Developing Proposal

Does the Model Regulation need to be updated to add greater clarity for products sold via e-commerce?

What should be expected when:

- **Purchasing On-Line**
- **Upon Receipt of the Product**

Looking at 3 primary products categories:

- **Standard Packages**
- **Random Weight Packages**
- **Bulk Products**



Standard Packages





Standard Package On-Line

Information which should be provided on-line at time of purchase

- **Product Statement of Identity**
- **Declaration of Net Quantity**
- **Brand Name or Name of Responsible Party**
- **Product Price**
- **Product Photo or Product Representation**



Standard Package Information when Received

Information to be provided on/attached to product when received

- **Product Statement of Identity**
- **Declaration of Net Quantity**
- **Declaration of Responsible Party**

Information to be provided on transaction receipt

- **Product Price**
- **Product Identity**



Random Weight Packages





Random Weight Package On-Line

Information which should be provided on-line at time of purchase

- **Product Statement of Identity**
- **Unit Price**
- **Approximate Product Net Weight**
- **Maximum Product Price**
- **Product Photo or Product Representation**
- **Name of Responsible Party (if different from retailer)**



Random Weight Package Information when Received

Information to be provided on/attached to product
when received

- **Product Statement of Identity**
- **Product Net Weight**
- **Unit Price**
- **Product Price**

Information to be provided on transaction receipt

- **Product Price**
- **Product Identity**



Bulk Products





Bulk Product On-Line

Information which should be provided on-line at time of purchase

- **Product Identity**
- **Unit Price**
- **Approximate Product Net Weight**
- **Maximum Product Price**
- **Product Photo or Product Representation**



Bulk Product Information when Received

Information to be provided on/attached to product
when received

- **Product Identity**

Information to be provided on transaction receipt

- **Product Identity**
- **Product Net Weight**
- **Unit Price**
- **Product Price**



Thank You on Behalf of PALS!



Multi-Grain

FLOUR TORTILLAS

8

TORTILLAS

Net Wt. 12.7oz (360g)



Multi-Grain

Soft T

TEAR OUT
TO OPEN

MADE FROM REAL TEA LEAVES

iced tea

SUGAR SWEETENED ICED TEA MIX

NATURAL LEMON
FLAVOR

MAKES 28 QUARTS



NET WT 4 lb 10 oz (1.81 kg)





Free of Dyes
& Perfumes
Sin colorantes
ni perfumes

40 LOADS
LAVADAS



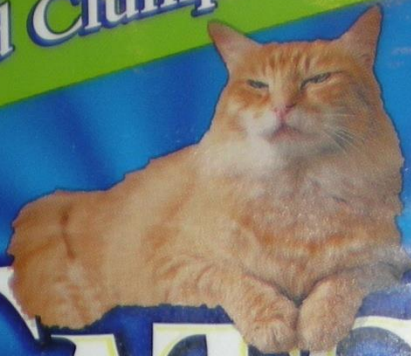
DETERGENT / DETERGENTE

gentle

perfumes
bas dermatológicas

56 OZ (3.5 LB) 1.6 kg

New!
Improved Clumping



CATS PRIDE®

SCOOPABLE

Premium Cat Litter

NET WT 14 LBS (6.35 kg)

**40%
MORE**

Litter per
Pound than
the Leading
National
Brands

Safe to
Flush†

Powerful
Odor Control

Same Fills As*

20 LBS.



Issue Background

- Questions related to expressions appearing in addition to the required Declaration of Net Quantity are raised within NCWM every few years.
- NCWM L&R item in 2011 proposed to prohibit certain comparative statements from appearing on the PDP.
- FTC opinion on statements requested
- L&R delegated item to NCWM PALS



PALS Approach

- Use of Voluntarily Added Information is Increasing
 - Consumers want and use this information
 - New technology and product forms make traditional product comparisons more difficult
- A Net Quantity Statement and/or Unit Pricing may not be sufficient for consumers to make accurate value comparisons or make informed purchase decisions.
- PALS did not think periodically challenging individual products or expressions was practical approach.
- PALS recommended withdrawal of this specific item with agreement to evaluate the topic holistically



PALS Approach (cont.)

- PALS noted little formal guidance for manufacturers or regulators – and positions were often subjective.
- PALS examined products on store shelves.
- PALS categorized the different kinds of expressions
- PALS is drafting Principles (and accompanying detailed information) for each expression category
- PALS is compiling these Principles into a Recommended Best Practice (Guidance) document
- PALS currently does not believe added regulation is needed if guidance is developed.



Recommended Best Practice Document

- Establishes 5 categories of expressions
- Establishes 12 principles– some which apply to all 5 categories and some which are category-specific.
- Provides detailed guidance to further explain and detail the principles.
- Provides examples to further illustrate principles



Expression Categories

Category	Example
1. Additional Expression of Quantity	“24 Tea Bags”
2. Reconstituted Expression of Quantity	“Makes 2 Liters”

Additional Expression of Quantity



**Additional
Expression of
Quantity**

6 DOUGHNUTS



Reed's
DOUGHNUTS



2.0 LB (907 g)

**Declaration of
Net Quantity**



**Additional
Expression of
Quantity**

$\frac{1}{2}$ Liter

Additional Expression of Quantity

**Declaration of
Net Quantity**

500 mL (16.9 FL OZ)





Reconstituted Expression of Quantity



Lemonade



Reed's

MAKES



QUARTS

2.0 LB (907 g)

Reconstituted
Expression of
Quantity

Declaration of
Net Quantity



Expression Categories (cont.)

Category

Example

3. Derived Unit Expression

“20 Loads”

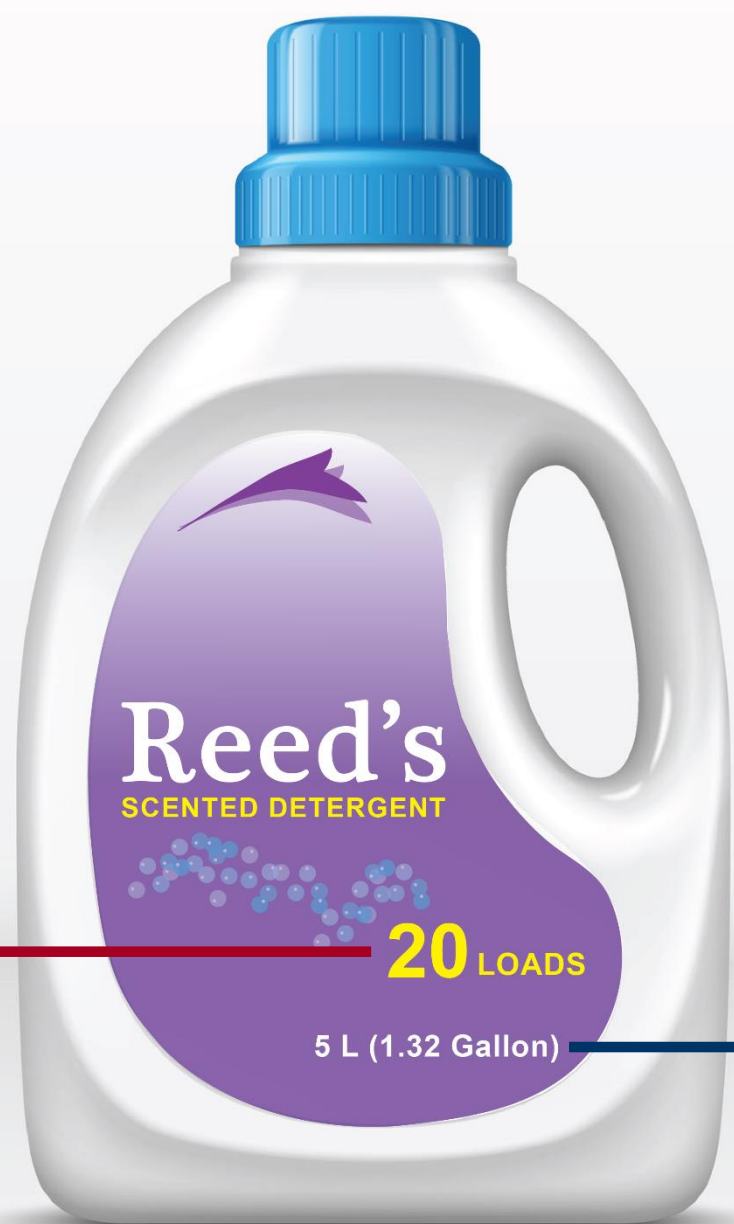
4. Comparative Quantity Representation

“40% More Product Per Package”

5. Comparative Performance Representation

“Does 25% More Loads”

Derived Unit Expression



**Derived Unit
Expression**

**Declaration of
Net Quantity**

Comparative Quantity Representation



**Comparative
Quantity
Representation**

This **8 Pound** package contains the same volume as our **15 LB** regular product!

**Declaration of
Net Quantity**

8 LB (3.6 kg)

Reed's

LIGHTWEIGHT
CLUMPING CAT LITTER



Comparative Quantity Representation



**Comparative
Quantity
Representation**

33% MORE VOLUME

than Competitor's
8 Pound litter products

**Lighter
Weight!**

Reed's

CLUMPING CAT LITTER



**Declaration of
Net Quantity**

8 LB (3.6 kg)

Comparative Performance Representation



**Comparative
Performance
Representation**

2X CONCENTRATE
Does twice as many
loads for the same size!

Reed's
SCENTED DETERGENT

5 L (1.32 Gallon)

**Declaration of
Net Quantity**

Comparative Performance Representation



**Comparative
Performance
Representation**

2X's as many
loads as
Ed's 2L size!

**Declaration of
Net Quantity**



Expression Principles

Principle #1

Expression should be useful for consumers.

- How does the expression provide practical and helpful information assist consumers?
- Applies to all categories



Principle #1 Detailed Guidance

Manufacturers should consider whether providing quantity-related information beyond what is provided in the mandatory declaration of net quantity will be useful for consumers. Does the expression increase the visibility of quantity information, educate consumers about product quantity or performance, meaningfully assist with value comparisons, or provide other benefits?

Not every product requires a voluntary declaration



Principle #1 Detailed Guidance

Voluntary expressions may:

- Help consumers quickly identify a product on the shelf when there are many similar products in various sizes
- Help consumers evaluate products used in different forms (liquid or solid) and different levels of concentration
- Provide a common frame of reference for consumers to make quantity comparisons across multiple possible product forms.
- Help consumers understand that a new product has a different product concentration or density and how this new product compares to other products
- Educate or reassure consumers about a product in comparison to a previous version of the product or a competitive product



Expression Principles

Principle #2

Expression must be accurate and verifiable on the basis of an individual package.

- Is the statement true?
- Can statement accuracy be verified?
- Applies to all categories



Principle #2 Detailed Guidance

Voluntary expressions which contain quantity-related information must be accurate and verifiable using appropriate objective evaluative procedures and are subject to external evaluation and confirmation.

- **For expressions using defined units of measure or count,** accuracy should be based on test methodologies recognized by appropriate authorities such as a federal, state or international agency or standards organization.
- **For expressions relating to product reconstitution,** accuracy should be based upon the directions for product preparation appearing on the product label and test methodologies recognized by appropriate authorities such as a federal, state, or international agency or standards organization.



Principle #2 Detailed Guidance

- **For Derived Unit Expressions (DUEs) and Comparative Performance Representations (CPRs)**, accuracy should be based upon the unit definitions (which must be present on the product label) and verified using objective testing procedures.
- Since a Derived Unit Declaration (DUE) is not a unit of legal metrology, manufacturer should:
 - Define Unit on the package label
 - Ensure appropriate test method or validation process for quantifying the unit has been established
 - Ensure the expression is accurate and verifiable.

Statement accuracy must be supportable by manufacturer data and is subject to external evaluation and confirmation.



Expression Principles

Principle #3

Expression must be Clear and Unambiguous.

- Is the intended meaning clear and easy to understand?
- Applies to all categories



Principle #3 Detailed Guidance

Short Expressions using recognized units are generally viewed as clear and unambiguous. “2 Cups”, “5 Yards of Twine”

Use of additional language to qualify a quantity-related term requires careful consideration and evaluation.

- A manufacturer needs to determine if any phrasing used in a quantity related provides accurate information about package contents which can be verified.
- Conversely, an expression using “About,” “Approximately,” “Up to”, “On Average” and similar terms are not recommended to appear on the PDP because they are generally considered unclear and ambiguous.



Principle #3 Detailed Guidance

Statements like....

- **Approximately 50 Cookies**
- **About 2 Cups**
- **300 Pencils on Average**
- **Up to 50 Cookies**

...provide little assurance of the quantity in an individual package.

While a statement of “25 candy bars on average” may be a technically correct statement based on manufacturing variability, this statement provides a consumer who purchases a single package little assurance that the specific package they select contains 25 – it may be more, it may be less. As a result, use of these expressions is not recommended since they do not provide sufficient information to the consumer about a specific package.



Principle #3 Detailed Guidance

Reconstituted Quantity Expressions must provide clear information about the amount of ready-to-use product a consumer should expect a package to deliver based on clear label instructions for product preparation.

Expressions containing a derived unit must define the derived unit on the package label so that it is available for consumer inspection prior to product purchase.

In many instances, icons may help provide this information in an effective manner.



Principle #3 Detailed Guidance

Comparative expressions (CQR and CPR) need to be complete and balanced expressions which help the consumer understand how this product compares to other packages.

- Comparative statements need to be complete, stand-alone statement.
- While an asterisk may be used to provide additional information substantiating the comparative expression, a manufacturer should not rely on the asterisked information to explain what a comparative statement really means.



Expression Principles

Principle #4

Expression must not conflict with the information in the Mandatory Statement of Net Quantity

- Is the expression consistent with the mandatory DoNQ?
- Applies to all categories



Principle #4 Detailed Guidance

Voluntary expressions should provide information which is equivalent to or consistent with the information present in the required DoNQ.

A 1 Quart package which defines the term “dose” to be 2 fluid ounces should state the package contains “16 Doses”. An expression of “17 Doses” or “20 Doses” would not be consistent.

A package labeled “1 Liter” should not have an expression such as “Contains at least 1 Liter” since that is fundamentally different.



Principle #4 Detailed Guidance

Expressions may:

- Repeat part of the of the DoNQ, such as “2 Pounds”
- Provide equivalent information such as “4 Quarts” when DoNQ states “1 Gallon”
- Provide accurate reconstituted quantity consistent with DoNQ and preparation instructions
- Provide accurate derived unit quantity consistent with the DoNQ and derived unit definition on package
- Provide comparative information which accurately accounts for the quantity information in the DoNQ



Expression Principles

Principle #5

Expression Location and Prominence (Size, Font, and Contrast, Separation from DoNQ) must be considered in relation to prominence of the required Declaration of Net Quantity to ensure balance.

- Does the expression location, size, font contrast, and other attributes effectively provide information in addition to the DoNQ?
- Applies to all categories



Principle #5 Detailed Guidance

Manufacturers should consider the cumulative effects of quantity statement location, size, font, color and contrast on the package in relation to those of other required PDP statements.

The location, font, and contrast of a voluntary quantity-related expression should help the consumer to make informed value comparisons at the point of purchase.

A Voluntary Expression should compliment or reinforce the information provided by the DoNQ and not diminish the visibility of the required DoNQ .



Principle #5 Detailed Guidance

Reasonable Balance is to ensure expression and DoNQ information are both effectively communicated to the consumer at the point of purchase.

Reasonable balance **does not** mandate that voluntary expressions must match the size, font, contrast, or other attributes of the DoNQ.

Reasonable balance **does** allow manufacturers to adjust the size (generally equal or larger), font (generally bolder), and contrast (brighter colors, use of icons, banners and backgrounds).

Reasonable balance **does not** restrict expression location (Top 70% vs Bottom 30% of PDP).



Principle #5 Detailed Guidance

Combining a derived unit expression and the required DoNQ in a common box or other graphical/visual representation which appears to link both is not recommended.

Since DoNQ location is mandated by law and consumers know where it can be found, manufacturers are generally going to design a voluntary expression to maximize the chances the expression is also going to be seen at the point of purchase by the consumer.



Expression Principles

Principle #6

Expression should be relevant and in consumer meaningful units

- Are the conditions of use well defined and do the statements reflect real-life usage expectations?
- Applies to all categories
- Important for derived unit statements and comparative statements based on derived units



Principle #6 Detailed Guidance

Voluntary expressions should provide information that a consumer purchasing the product is likely to want or need to know prior to purchase.

The voluntarily added information provided should reasonably relate to how a normal user would actually use the product.



Principle #6 Detailed Guidance

An expression providing information in terms of a recognizable derived unit can be helpful and relevant to a consumer when the product is used in a regular and consistent manner by the majority of users.

Generally, a derived unit expression or derived unit representation should have a logical or research-based rationale for why this information is useful to consumers.

Conversely, the relevance of a voluntary expression is less applicable to products which are used less frequently or in a less uniform manner.



Expression Principles

Principle #7

Expression should not conflict with units of Legal Metrology

- Is the expression consistent with units of Legal Metrology?
- Is the expression exaggerating or minimizing a unit of measure?
- Does the expression have the potential to create confusion?
- Applies to DUEs, CQRs and CPRs



Principle #7 Detailed Guidance

Voluntary expressions should ensure the expressions do not conflict with or redefine a unit of legal metrology.

Units of legal metrology such as ounce, pound, ton, pint, quart, cup, liter, foot, inch, yard, bushel, etc. have precise definitions and incorporating these terms into the definition of a derived unit requires careful consideration to ensure the derived unit is clear and non-misleading.



Principle #7 Detailed Guidance

Voluntary expressions should avoid practices that could create confusion regarding existing units of measure.

Federal Law prohibits any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of product in a container such as “jumbo quart” or “full gallon”.

Manufacturers should practices that may create confusion regarding existing units of measure, such as using a “10-inch foot”.



Expression Principles

Principle #8

When reconstituted expressions are used, directions for how to reconstitute product must be on package label.

- If an expression states how much product the package can make, the directions for how to prepare the product must be provided on the label.
- Applies to REQs



Principle #8 Detailed Guidance

- **When a Reconstituted Expression of Quantity is present on the PDP, the manufacturer must provide information detailing how the product is to be reconstituted on the package label for consumer inspection prior to product purchase.**
- **A consumer should be able to readily understand the directions (including other ingredients and equipment needed) to reconstitute the product prior to making a purchase decision.**



Expression Principles

Principle #9

Expressions containing derived units must provide unit definition on the package label.

- If an expression conveys a quantity in terms of a Unit which is not defined in Legal Metrology, the Unit must be adequately defined on the label.
- Applies to DUEs, CQRs, and CPRs



Principle #9 Detailed Guidance

- A consumer should be able to readily view and accurately understand a derived unit statement prior to making a purchase decision.
- Since a derived unit is not a recognized unit of Legal Metrology, it needs to be defined
- The information defining and explaining the derived unit should be located on the package label for consumer inspection prior to product purchase.



Expression Principles

Principle #10

Derived unit definitions must be consistent between similar products.

- The definition for a Derived Unit term must be consistent across similar products using that term
- is the voluntary expression based on a consistent metric and meaning within a product category?
- Important for derived unit statements and comparative statements based on derived units
- Applies to DUEs, CQRs, and CPRs



Principle #10 Detailed Guidance

Consumers need confidence that expressions appearing on similar and competing product packages can be applied consistently in order to facilitate value comparisons.

Inconsistent definitions for the same “derived unit” or use of different “derived units” by competing products will confuse or mislead consumers.

It is incumbent upon manufacturers using expressions containing derived units to ensure those expressions help consumers and aid in value comparison and purchase decisions.



Principle #10 Detailed Guidance

When different definitions are being used for similar products, individual companies and trade groups must work together to develop and implement consistent definitions.

The uniform, common definition can be defined based on common product attribute--such as a delivered concentration, a recognized level of performance, a defined quantity of product, or other consumer-related parameter.



Expression Principles

Principle #11:

Comparative Expressions which do not contain a reference to recognized units of Legal Metrology must be balanced and complete.

- Does Comparative Expression provide a complete and balanced message?
- Applies to CPRs



Principle #11 Detailed Guidance

Manufacturers must ensure comparative statements which appear on the Principal Display panel are complete, clear, correct, balanced, relevant, and non-misleading.

CPRs will vary in length, word choice, icons/pictogram use, quantity(ies) being compared, and can use limitless choices of fonts, colors and contrasts to emphasize all or certain parts of an expression.

Manufacturers must consider how the CPR will appear in conjunction with the package's required DoNQ to help facilitate accurate comprehension and value comparison.



Principle #11 Detailed Guidance

To help ensure CPRs are clear, it is recommended:

- A comparative performance expression must be a complete statement with clear and explicit reference to the products that are being compared.
Example: “This 20 ounce concentrate provides 100% more uses than our 20 ounce unconcentrated product”. Just saying “100% more uses.” is not a complete statement.
- Information gathered on comparative products should use the same testing methodology as that used for the package bearing the CPR, unless it is not technically feasible and an alternate objective test method is used.



Principle #11 Detailed Guidance

- While a CPR is not required to name another brand, it should be clear, accurate and valid.
- A CPR must provide equal emphasis on the units of measure. For example, ““This **40 Load** package provides double the uses as our **20 Load** package”.
- While asterisks may be used in conjunction to a CPR, asterisked information provide reference and not be the basis for the comparison.
- The comparative product should be a marketed or recently discontinued product, not a product marketed years ago.



Expression Principles

Principle #12

Comparative Expressions which contain a reference to a unit of Legal Metrology must be complete and balanced statements and must appear entirely in the upper 70% of the PDP.

- Does Comparative Expression make comparisons based on units of Legal metrology?
- Applies to CQRs



Principle #12 Detailed Guidance

Manufacturers must ensure comparative statements which appear on the Principal Display panel are complete, clear, correct, relevant, and non-misleading.

They also need to ensure that a CQR (or parts thereof) is not interpreted by consumers to be the required DoNQ.

CQRs will vary in length, word choice, icons/pictogram use, quantity(ies) being compared, and can use limitless choices of fonts, colors and contrasts to emphasize all or certain parts of an expression.

Manufacturers must consider how the CQR will appear in conjunction with the package's required DoNQ to help facilitate accurate comprehension and value comparison.



Principle #12 Detailed Guidance

To help ensure CQRs clarity, it is recommended:

- Comparative expressions with of one or more units of Legal Metrology must appear in its entirety in the upper 70% of the PDP (or on another package location). No part should appear in the lower 30% of the PDP.
- A comparative expression using units of Legal Metrology must be a complete statement with clear and explicit reference to the products that are being compared.
- The comparative product should be another currently marketed or recently discontinued product, not a product marketed 5 years ago.



Principle #12 Detailed Guidance

- A comparative expression comprised of one or more units of Legal Metrology must provide equal emphasis on the units of measure. For example, “This **46 OZ** package provides over 100% more product than Reed’s **22 OZ** package”.
- While asterisks may be used in conjunction to a CQR, asterisked information should be used to provide reference for the basis of the expression and not explain what the CQR really means. A CQR needs to be able to stand on its own.



Use of the Recommended Best Practice

Identify Category of Expression



Identify which Principles are Applicable



Get Detailed Guidance



Principles and Scope

	Expression Category (Name, Abbreviation, Example)					
Principal	Additional Expression of Quantity AEQ "24 buns"	Reconstituted Expression of Quantity REQ "Makes 2 gallons"	Derived Unit Expression DUE "20 Loads"	Comparative Quantity Representation CQR "40% More Litter Per Pound"	Comparative Performance Representation CPR "Lasts about 25% Longer"	
Expression provides useful information to help consumers	X	X	X	X	X	
Expression must be Accurate, Verifiable.	X	X	X	X	X	
Expression must be Clear and Unambiguous	X	X	X	X	X	



Principles and Scope

Principle and Scope	Detailed Guidance
<p>2. Expression must be Accurate and Verifiable.</p> <p>Is the statement true?</p> <p>Can statement accuracy be verified?</p> <p>Applies to all categories</p>	<p>Voluntary expressions which contain quantity-related statements must be accurate and verifiable using appropriate evaluative procedures and are subject to external evaluation and confirmation.</p> <p>For expressions using defined units of measure or count, accuracy should be based on test methodologies recognized by appropriate authorities such as a Federal, State or International agency or standards organization.</p> <p>For expressions relating to product reconstitution, accuracy should be based upon the directions for product preparation appearing on the product label and test methodologies recognized by appropriate authorities such as a Federal, State, or International agency or standards organization.</p> <p>For Derived Unit Expressions (DUEs), and Comparative Performance Representations (CURs), accuracy should be based upon the unit definitions (which must be present on the product label) and verified using objective testing procedures. For example, since a Derived Unit Declaration (DUE) does not use a unit of legal metrology, a manufacturer must define that unit on the package label, ensure an appropriate test method or validation process for quantifying the unit has been established, and ensure the expression appearing on the PDP is accurate and verifiable. Where possible, the accuracy of the declaration should be based on test methodologies recognized by appropriate authorities such as a Federal, State or International agency of authority.</p>



What do these Principles Accomplish?

- **Increased Consistency and Transparency**
- **Verifiable Expressions**
- **Clearer, More Complete and More Balanced Expressions**
- **Decreased Consumer Confusion**



Potential Marketplace Impact

The following packages might be modified based on the recommendations contained in this document.

UP TO
JUSQU'À

100

USES
UTILISATIONS



aussie®

miraculously
smooth

shampoo
shampooing • champú

CLEANSE • NETTOYER

Seriously silky smooth for fussy frizzy manes

Une formule tout simplement douce et
soyeuse pour maîtriser les cheveux frisottés

865 mL (29.2 FL OZ)

45200528

PRIDE

SCOOPABLE

Premium Cat Litter

NET WT 14 LBS (6.35 kg)

**Powerful
Odor Control**

*Same Fills As**

20^{LBS.}



with

MESQUITE

⇒ Charcoal Briquets *with* Real Mesquite Flavor ⇐

MORE BBQ TIME PER POUND* | MÁS PARRILLADAS POR LIBRA*

*Compared to other charcoal brands.

*Comparado con otras marcas de carbón.

15.7 LB (7.12 kg)



READY FASTER *and* BURNS LONGER!

Spring Magic™ Magia de Primavera

Fab

ULTRA
laundry detergent

®

DAZZLING WHITES

FOR ALL
MACHINES
INCLUDING  **32**
LOADS

NET WT 2.1 LB (.96 kg)

CAUTION: IRRITANT. KEEP OUT OF REACH OF CHILDREN (See caution on side label)
CUIDADO: IRRITA LOS OJOS. MANTÉNGASE FUERA DEL ALCANCE DE LOS NIÑOS (Precauciones en el panel lateral)

2 MORE SCOOPS
Over 15% more ice cream than 1.5 oz.



BLUE BUNNY

QUALITY *Wells* SINCE 1913

PREMIUM

ICE CREAM

Chunky Chocolate Chip

Vanilla Flavored Ice Cream Loaded with Chocolate Chunks

ARTIFICIAL FLAVOR ADDED



Benefits to Manufacturers

- **There now would be a reference for how to add this information.**
- **Reference information provides more certainty for manufacturers wanting to add a statement.**
- **Reference information provides more uniformity and consistency across packages**



Benefits to Regulators

- **Regulators can direct manufacturers to Recommended Best Practice when asked for assistance**
- **Regulators can direct manufacturers to Recommended Best Practice when concerns or questions are identified about a certain package.**
- **Regulators will have a basis for asking more specific questions about a particular package.**
- **Package labels will be more complete and uniform.**
- **Fewer issues/complaints/concerns exist regarding these statements on package labels.**



Benefits to Consumers

- **Label information is more complete, uniform and consistent.**
- **Label information provided to consumers is more useful and helpful.**
- **Label information provided to consumers is less likely to be confusing or misleading.**
- **Consumers are able to make better value comparisons at the point of purchase.**



Challenges

A Recommended Practice Document is not the same as a Regulation.

- Most companies try to do the right thing and would follow recommended practice if it existed.
- Where there are concerns, both regulators and manufacturers can use principles to encourage improvement prior to taking stronger action.
- Recommended Practice does not prohibit enforcement actions for perceived violations.
- Recommended Practice doesn't increase a Jurisdiction's enforcement responsibilities.



Why Recommended Best Practice?

- Wide variety of instances where information may be useful
- 1st Amendment Rights
- FTC recognizes information is important to consumers
- No guidance exists for manufacturers or regulators
- Result is each manufacturer and/or regulator is “on their own”.
- Recommended Best Practice provides, for the first time, a reference source for manufacturers and regulators to use to improve label quality and consistency for consumers.
- Regulation, if deemed necessary in the future, always remains an option.



Challenges

Questions about Supplemental Statements

- FPLA Record allows added information; implementing regulations prohibit “supplemental” information.
- Historically, the term has been viewed narrowly, with many statements determined to be not supplemental.
- Numerous statements currently in use have never been questioned or challenged.
- Consumers continue to want more and more information about products.



FPLA Section 4(b)

4(b) SUPPLEMENTAL STATEMENTS

No person ... shall distribute ... any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a), but nothing ... shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: *Provided*, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight or mass, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

Three parts:

- 1. No qualifying the mandatory language**
- 2. Supplemental statements allowed "at other places"**
- 3. No term that tends to exaggerate the amount**



What is a Supplemental Statement?

- There is no official definition
- Legislative history example: “6 oz. of fast acting X detergent”
- Congress said this is a “supplemental statement” that can be “apart from the required net quantity statement”



Implementing Regulations - FDA

Nothing in this section shall prohibit supplemental statements at locations other than the principal display panel(s) describing in nondeceptive terms the net quantity of contents; *Provided*, that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the food contained in the package; for example, "jumbo quart" and "full gallon".

21 C.F.R. § 101.7(o)



FDA Interpretations

- On a commodity requiring a declaration of fluid measure, a weight declaration **IS** supplemental
- On a commodity for which weight or volume is sufficient (e.g., sliced cheese, candy bars at Halloween, where weight is enough), count may be voluntarily added and **IS NOT** supplemental
- A voluntary declaration of drained weight **IS NOT** supplemental when combined with a mandatory declaration of the total package weight, including packing liquids
- A reconstitution declaration such as “makes 1 quart” **IS NOT** supplemental
- Metric labeling **WAS NOT** supplemental when voluntarily provided



Implementing Regulations - FTC

Supplemental statements.

Nothing contained in the regulations in this part shall prohibit supplemental statements, at locations other than the principal display panel, describing in non-deceptive terms the net quantity of contents ... Required combination declarations of net quantity of contents (for example, a combination of net weight or mass plus numerical count, numerical count plus dimensions of the commodity, etc.) are not regarded as supplemental net quantity statements and shall be located on the principal display panel. Dilution directions or other similar directions for use are not regarded as supplemental net quantity statements and may be located on the principal display panel. Size characterizations in compliance with standards promulgated under section 5(c)(1) of the Act may appear on the principal display panel.

16 CFR § 500.24



FTC Interpretations

“Performance Claims”:

Letter from Robin Rosen Spector, Attorney, FTC Division of Enforcement, Bureau of Consumer Protection, to Michael Tomenga, Nov. 4, 2010



Commission staff believes that the “lasts the same as” statement on the Kingsford charcoal packaging does not qualify the package’s unit of weight. Consumers would likely reasonably interpret that statement as a performance claim about the product. The claim appears as a distinct item on the display panel and is separated from the net quantity declaration in accordance with the requirements of the FPLA regulations. Therefore, we would not recommend that the Commission bring a law enforcement action for violations of the FPLA based on the facts presented in your letter. Nevertheless, under Section 5 of the Federal Trade Commission Act, the company must possess and rely upon reasonable substantiation for the claim and the claim should not be deceptive. *See* FTC Policy Statements on Deception and Substantiation: <http://www.ftc.gov/bcp/policystmt/ad-decept.htm>; <http://www.ftc.gov/bcp/guides/ad3subst.htm>. We have not evaluated Clorox’s substantiation to determine whether law violations exist.



FTC Interpretations

Letter from James A. Kohm, Associate Director, FTC Division of Enforcement, Bureau of Consumer Protection, to David Sefcik, Nov. 30, 2016

All of the quantity-related expressions in the Subcommittee's draft guidance are descriptive or supplemental quantity information. Therefore, this information can only appear elsewhere on the packaging (anywhere except the principal display panel). *See* 16 CFR Sections 500.6 (b) (“The declaration of net quantity shall appear...on the principal display panel...and shall not include any term qualifying a unit of weight or mass, measure, or count...”) and 500.24 (“Nothing contained in the regulations in this part shall prohibit supplemental statements, at locations other than the principal display panel, describing in non-deceptive terms the net quantity of contents...”). Nonetheless, we are unlikely to recommend that the FTC pursue enforcement action for non-deceptive labels. Doing so could deprive consumers of valuable information in some situations.



So “Clear as Mud”?

- The FPLA – the statute that introduced the term “principal display panel” into law - does not use the term “PDP” in connection with supplemental statements
- The implementing regulations do limit “supplemental statements” on the PDP, but the agencies historically have found numerous statements to be expressly NOT supplemental or not worthy of enforcement action



Next Steps

- PALS plans to finish drafting document by the end of 2018.
- PALS requesting volunteers for comment review and comment for initial vetting.
- PALS will share document with FDA Compliance and plans to meet with FDA compliance as follow-up to FDA meeting at 2017 NCWM Annual Meeting.
- With FDA Alignment, PALS will submit Form 15 for NCWM adoption as a Best Practice Document.