

Approved: 2-23-96  
Date

## MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE

The meeting was called to order by Chairperson David Corbin at 10:00 a.m. on February 19, 1996 in Room 423-S of the Capitol.

All members were present except: Quorum was present.

Committee staff present: Raney Gilliland, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Lila McClafin, Committee Secretary

Conferees appearing before the committee:  
Allie Devine, Secretary, Department of Agriculture

Others attending: See attached list

### **SB 705 - concerning weights and measures devices.**

Chairperson Corbin called on Secretary Allie Devine for a briefing on the history of the Kansas Department of Agriculture's Weights and Measures Program since January 10, 1995. She distributed correspondence from Gilbert M. Ugiansky, Chief, Office of Weights and Measures, United States Department of Commerce (Attachment 1), and a letter from Charles A. Gardner, Chairman, National Conference of Weights and Measures (Attachment 2). She laid out the corrective actions she has taken pending permanent program changes. A reviewed of the weights and measures regulatory enforcement program, and the quality control program provided through statistical samplings, and the roles of the involved parties. Information regarding device owners was covered, fuel quality and quantity was addressed in her testimony, and finally civil penalties and budgets issues were discussed (Attachment 3). She said they were working with the Attorney General's Office on compliance and The Attorney General agreed that the fines should be returned to the Weights and Measures Division.

Written testimony from the following proponents was distributed:

Lee Eisenhower, Executive Vice-President, Propane Marketers Association of Kansas (Attachment 4)  
Don Snodgrass and Frances Kastner, Kansas Food Dealer's Association (Attachment 5)  
Jamie Glover Adams, Vice President Governmental Affairs, Kansas Grain and Feed Association and the Kansas Fertilizer and Chemical Association (Attachment 6)

Review of **SB 705** was continued until the next meeting. The meeting adjourned at 10:58 a.m.

The next meeting is scheduled for February 20, 1996.

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-19-96

NAME	REPRESENTING
Roger Myers Jode BAKER	Cap-Journal SELF
Allie Savine C Jordan	Dept of Agriculture " " "
Mary Ann Stattelmar STEVE KEARNEY	KS Dept of Ag KS OIL MARKETERS ASSN.
Tom PALACE	KS OIL MARKETERS ASSOC.
Clark Duffy	KPC
Ken Pelton	KPC
Greg Boen	mid m Kansas Assn
Leslie Kaufman	Kansas Farm Bureau
Rich McKee	KLA
Jamie Clover Adams	KGFA / KFCA
Lee Eisenhauer	Propane Marketers Assoc of KS
Joe Lieber	KS Co-op Council
David Wilcox	Div. of Budget
Steve KARRICK	ATTORNEY GENERAL
Greg Tugman	Dept of Ag
Tom WHITAKER	KS MOTOR CARRIERS ASSN

DICK SAITON  
T.J. BYRAM  
Gary M. Bothwell  
Tom Meyer  
Matthew Goddard

SELF  
KDA  
Grain Inspection  
Grain Inspection  
HCBA

*Owen*

NAME

Donald Snodgrass

Frances Kastner

ORG.

KANSAS FOOD DEALERS ASSN  
KS Food Dealers Assn.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Institute of Standards and Technology**  
 Gaithersburg, Maryland 20899-0001

February 16, 1996

Alice A. Devine  
 Secretary of Agriculture  
 Kansas Department of Agriculture  
 901 S. Kansas Avenue  
 Topeka, Kansas 66612-1280

Dear Secretary Devine:

This letter is in regard to the Office of Weights and Measures (OWM) review of the Kansas Department of Agriculture's (KDA) proposed revisions to the Kansas Weights and Measures Laws and its efforts to achieve uniformity with other States in requirements for weights and measures. We are pleased to cooperate with your State in this effort in accord with the National Institute of Standards and Technology (NIST) statutory authority to secure uniformity in weight and measures laws and methods of inspection among the States. During our review we consulted with members of the National Conference on Weights and Measures (NCWM) from other State jurisdictions to gain a wide range of views on the proposals you submitted.

The NCWM is a standards-development organization whose members include representatives from Federal, State, and local weights and measures jurisdictions, other government agencies; businesses; trade and professional organizations; consumer and other special interest groups. Standards developed by the NCWM have been adopted by all fifty States, and several agencies in the U.S. Department of Agriculture (USDA). NIST (formerly the National Bureau of Standards) established the National Conference on Weights and Measures (NCWM) in 1905 and continues its sponsorship.

#### OWM Comments on KDA Proposals

Your proposals to incorporate the latest requirements adopted by the National Conference on Weights and Measures (NCWM), and published in the following NIST Handbooks will ensure the Kansas Weights and Measures Laws are uniform with other States. Achieving uniformity in requirements will have a positive effect in the marketplace as it will allow industry and business to conduct their affairs in Kansas as well as other States according to a single set of requirements.

Adoption of NIST Handbook 44 "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" will help your State achieve its goal of adopting the most current requirements on weighing and measuring devices available. This action will ensure that Kansas requirements for weighing and measuring devices are identical to those used by other States and by several agencies of the Federal Government including the United States Department of Agriculture.

*Senate Ag Co.  
 2-19-96  
 Attachment 1*

**NIST**

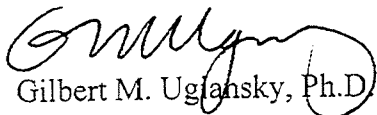
Incorporation of Uniform Regulations on Packaging and Labeling, Method of Sale of Commodities, National Type Evaluation, and Engine Fuels, Petroleum Products, and Automotive Lubricants Regulations in NIST Handbook 130 "Uniform Laws and Regulations" will ensure that Kansas requirements in these areas are identical with those used in other States and by several agencies of the Federal Government including the Food and Drug Administration, Federal Trade Commission and the United States Department of Agriculture.

Incorporation of NIST Handbook 133 "Checking the Net Contents of Packaged Goods" will ensure that Kansas requirements in these areas are identical with those used in other States and by several agencies of the Federal Government including the Food and Drug Administration, Federal Trade Commission, and the United States Department of Agriculture.

We believe the proposal to use statistical sampling as the primary means to control weighing and measuring device accuracy, supervise device service agencies, and monitor marketplace compliance, represent a reasonable and practical approach for State oversight of weights and measures. We agree with the premise that this approach has the greatest potential for success when it is supplemented with a system of education and training for service agencies and technicians; annual device testing requirements, and enforcement actions using civil penalties.

By adopting the proposed changes in the law, implementing the training and education programs, and establishing the other control functions described, we believe the State of Kansas will greatly improve its weights and measures program while maintaining its regulatory responsibilities in a partnership with the private sector.

Sincerely



Gilbert M. Ugfansky, Ph.D.

Chief

Office of Weights and Measures

# NATIONAL CONFERENCE ON WEIGHTS AND MEASURES



CHARLES A. GARDNER  
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SUFFOLK COUNTY WEIGHTS & MEASURES  
NORTH COUNTY COMPLEX, BUILDING 340  
HAUPPAUGE, NY 11788  
TELEPHONE: 516-853-4621  
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GILBERT M. UGIANSKY, Ph.D.  
EXECUTIVE SECRETARY  
P.O. BOX 4025  
GAITHERSBURG, MD 20885  
TELEPHONE: 301-975-4005  
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February 16, 1996

Alice A. Devine, Secretary of Agriculture  
901 S. Kansas Avenue  
Topeka, Kansas 66612-1280

Dear Allie:

On behalf of the Executive Committee of the National Conference on Weights and Measures (NCWM), I want to convey our appreciation to you and your staff for taking the time to meet with us in January. We appreciate your confronting the concerns over the Kansas Department of Agriculture's Weights and Measures program - concerns that were realized not only within the State of Kansas but also by many of the weights and measures jurisdictions throughout the country.

These concerns had the potential for creating credibility problems for regulators since many of the individual companies represented in Kansas, and certainly the various types of industries doing business within the State, also do business elsewhere and conflicting messages were being sent as to laws, policies, standards, and methods of enforcement of weights and measures regulations. There was also a message being sent from the State of Kansas about "privatization" and its benefits that was catching the ear of legislators and administrators from other jurisdictions. Cost-cutting and budget-containment are legitimate concerns of all governmental agencies and "privatization" is a buzzword of the day for saving money. Many of us in the weights and measures field were upset that this Kansas program was going to be perceived, erroneously, as one which was an effective regulatory program able to be run at a significant savings to taxpayers. We were convinced that it was neither.

Your anticipated corrective actions should serve to return your State program to one where all parties, first of all, know what is expected - not only of them - but of everyone else in the loop. The roles and responsibilities would be clearly defined. Device owners, service technicians and state inspectors - through professional and uniform training - will be better able to comply with the rules. This will lead to a greater degree of uniformity, a level playing field and, consequently, an equitable marketplace for all.

Uniformity is a key word in our business. Uniformity of standards, of training, of inspections - and

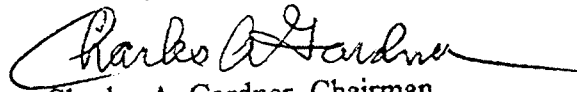
*Senate Ag Co  
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attachment 2-2-1*

not only within the boundaries of a State or from one inspector to another but from one State to another as well. It is an unfair burden on industry to have to adhere to various and sometimes conflicting requirements to accomplish the same end. Uniform training is essential for all concerned parties.

One of the more important parts of your proposal concerns the civil penalties section. It is imperative that the Department be able to take swift, decisive actions wherever and whenever appropriate as violations of the laws, rules or regulations are discovered. The ability to institute civil actions, hold administrative hearings, and offer civil compromises or settlements is critical to fair, timely resolutions of weights and measures violations found in the marketplace. If one's only recourse is the courts system, the "fair" part of the resolutions might still prevail, however, the "timely" part will almost never be there. You need a "hammer" to enforce an effective program and the civil process is, in my opinion, the one that works the best.

Good luck to you and your staff. I wish that I had the time to better address your proposals and be of some more help to you as I believe that you are well on the way to revitalizing the State's weights and measures activities to the point of establishing a credible, fair and professional program.

Sincerely,



Charles A. Gardner, Chairman  
National Conference on W&M

HISTORY OF THE  
KANSAS DEPARTMENT OF AGRICULTURE'S  
WEIGHTS AND MEASURES PROGRAM  
SINCE JANUARY 10, 1995

Concerns over the integrity of the program began to surface from a number of sources shortly after Kansas Department of Agriculture (KDA) Secretary Allie Devine took office in January 1995. In February, weights and measures staff openly expressed their dissatisfaction with program administration and procedures during interviews conducted by a staff member of the office of the governor.

In May, officials from USDA's Packers and Stockyards Administration (PSA) office in Kansas City expressed concern about the veracity of the state's inspection program. Results of random livestock scale tests conducted by PSA showed eight of fourteen scales tested were out of compliance despite recently having been tested and approved by private service companies.

The Secretary requested the State Division of Personnel to conduct an internal review of the program. The personnel study, presented June 12, confirmed many of the same concerns expressed earlier to the Secretary.

In June, a representative of the Petroleum Marketers Association conveyed to the Secretary his industry's concern about privatization of petroleum device inspections and its support for returning to a state program.

Faced with this variety of program concerns, the Secretary was obliged to contact Attorney General Carla Stovall. At the direction of the Attorney General, a KBI investigation was ordered in July. The findings, released in December, showed no evidence of criminal behavior but listed recommendations for improved operations of the program.

In September, Legislative Post Audit began a K-GOAL audit of weights and measures. Results, released to the committee and public in January, also showed many problems with the program and the accuracy of weights and measures devices in the state.

### CORRECTIVE ACTIONS

Many corrective actions were ordered pending permanent program changes. They included the following.

- Directed staff to investigate and analyze the program.
- Research began on proposed petroleum measurement regulations and cooperation with the Department of Revenue.
- Letters, regulatory discussion and meetings with service companies served to undo "gentlemen's agreements" and underscore commitment to Kansas law, rules and regulations, and National Institute of Standards and Technology (NIST) handbooks and tolerances.
- Scheduling of testing, enforcement of requirements for regular testing and improving quality of testing is underway.
- Service companies have been notified that the Department is and will strictly enforce their requirements to submit reports to Topeka within 10 days.



- Field staff have been notified that they can enforce the law by red tagging devices or taking other necessary action. Their input, in turn, has been sought.
- Compliance conferences, conducted by agency legal staff, are being scheduled as necessary.
- Data bases on devices and facilities are being updated; improved computer systems are being analyzed.
- Statistically defensible sampling plans were developed for subprograms; a baseline of compliance data is being created.
- A series of meetings were held with industry representatives to seek their input for program improvements. A list of the names of those participants is provided in Appendix A.
- Consultants from the state of California and the National Institute of Standards and Technology have visited Kansas to advise program planners; other state program directors also have been consulted. A list of the names of those participants is also provided in Appendix A.
- Staff of the Allied Signal Department of Energy Plant in Kansas City have assisted in performing a systems analysis of the weights and measures program. A list of the names of those persons assisting from Allied is provided in Appendix A.
- The Governor's Agricultural Advisory Board has approved proposed corrective measures and statutory changes.

### KANSAS WEIGHTS AND MEASURES REGULATORY ENFORCEMENT PROGRAM

Kansas law requires all commercial weighing and measuring devices to be tested and certified accurate at least once a year. Accuracy of weighing and measuring devices has the dual goals of protecting both consumers and businesses through equity in the marketplace.

#### PUBLIC/PRIVATE PROGRAMS

Accuracy of small scales, large scales and VTM propane devices in Kansas will be ensured through a public/private program, in which private, licensed service companies provide a yearly test under the strict supervision of and oversight from the state. Below is a short description of devices which will be inspected under this regulatory scheme.

1. Small scales--Small scales are strictly defined as those under 5,000 pounds. The majority, however, weigh amounts under 200 pounds and are located in grocery, hardware, drugstores and the like. There are approximately 11,500 of those devices in the state.
2. Large scales--Large scales weigh amounts over 5,000 pounds and include livestock, grain and truck scales. There are some 8,000 large scales in Kansas.
3. LP/VTM--The definition of LP/VTM includes liquid propane trucks and any motor fuel dispensing device that has a meter. There are some 800 LP gas devices and 3,000 vehicle tank meters.

## QUALITY CONTROL PROVIDED THROUGH STATISTICAL SAMPLING

One of the hallmarks of this regulatory program is the use of statistical surveys as a Quality Control Program. Statistical surveys provide analytical, defensible data that can be used to identify and evaluate marketplace problems; to monitor service company and licensed technician performance; to target enforcement measures; and to efficiently manage workloads of state inspectors. The Quality Control Program consists of four components.

First, one random statistical survey of all devices in an entire population of each device will be performed each year. For example, each year the Department will perform one statistical random survey of all small scales in the state. This survey will indicate how the marketplace acts. It would show, for example, what the consumer or business could expect when they do business. Similar surveys would be done for all other types of devices. These surveys would be administered evenly throughout the year to maintain a weights and measures presence in the field at all times. This poses an element of surprise to enhance enforcement. In addition, the results of these surveys will be used to monitor the compliance ratios reported by the service companies and to evaluate the success of the program and accuracy of devices throughout the state.

A second series of surveys would be done of the service company work in each device category. The sample size will be determined at the beginning of the fiscal year and administered on a weekly basis throughout the year. Sample units in the weekly service companies' reports matching the predetermined random interval sampling will be followed up by weights and measures employees within 30 days of the service company's inspection. The results of this survey will monitor the performance of service companies' technicians and provide data, when necessary, to support enforcement actions. Further, this data will be used to detect problems with specific technicians, companies or devices. This data will provide a key analytical tool to target future enforcement.

The third quality control sample will be a random sampling of service companies' records. This survey will monitor the service companies' compliance with record-keeping requirements of the weights and measures program. On-site record-keeping is vital to provide detailed histories of devices, technician, or service company performance to program administration.

Finally, random visits to service companies will assess general compliance with program requirements and training needs. The visits also will provide a time to foster good working relationships with the companies and solicit feedback from technicians. This function will depend on the availability of funds.

## ROLES OF INVOLVED PARTIES

Device owners, service companies, service technicians and state inspectors all have key roles in this regulatory framework. Each of these roles is further defined below and in the proposed statutory revisions.

### Private Service Company Technicians

Weights and measures is a highly technical field. To conduct accurate tests, the performer of the device test must be trained. Further, because the private service technician is performing the annual tests required by law and key to assurance of accurate devices in the state, this proposal seeks the authority to require training and education of persons seeking to be licensed technicians.

Under this proposal, only licensed technicians may certify scales for accuracy for use in trade in the state of Kansas. To obtain a license, KDA will require service company technicians to receive both education and hands-on training in scale operation, repair and testing. Education and training programs will be conducted through KDA by experts selected by the Secretary, or through educational programs approved by the Secretary. The Department is seeking authority to seek reimbursement for the cost of education and training programs.

Under the proposal, regardless of previous training and experience, all technicians who wish to be licensed must meet the minimum training and educational requirements. Further, as a condition of licensing, the statutory proposals require licensed technicians to meet continuing education requirements as prescribed by the Secretary through rule and regulation.

After completing training and in order to receive their licenses, technicians must pass a test administered by KDA. Follow-up testing will be required on an annual basis to maintain a valid license. The test, as well as the minimum score necessary to pass the test, will be determined by the Secretary.

Technicians who desire to be licensed to certify the accuracy of specific categories of devices may be required by the Secretary to complete education, training, and testing programs specific to those device categories. Such specialized programs will ensure that technicians have the skills necessary to perform competent testing and certification of highly technical devices. KDA may issue technician licenses in the form of a card which indicates the category of device for which they have received training and testing. Technicians may only certify those devices indicated on their valid KDA license.

Under the proposal, licensed technicians will be required to use a standardized form prescribed by the Secretary to report the results of annual device tests. This form will be sent to the Department for documentation of basic information necessary to develop the data bases used in the Quality Control surveys. After the data is entered into the Department's data bases, the forms will be discarded. This reduces the paperwork and the manpower necessary to maintain records in the Department. Accurate reporting and data management are vital to the maintenance of this regulatory program.

Under the proposal, the Secretary may fine and/or revoke the license of a technician who shows a pattern of incompetent and inaccurate work, who submits false test reports, who certifies devices in a category for which he or she is not licensed, or who fails to meet the education, training and testing requirements set forth by the Secretary.

### Private Service Companies

Another key role of this regulatory plan is the licensing of private service companies. Service companies will be required to hold a valid KDA license and to meet all conditions of service company licensing set out by statute and regulation to qualify for the business of certifying weighing and measuring devices in the state of Kansas. Service companies will continue to pay a \$50 per year license fee required by current law.

To be licensed, a service company will be required to maintain all test reports for at least five years in a form and place designated by the Secretary, to certify that those records are true, and to report to or make those records available for inspection by the Secretary or the Secretary's authorized representative upon request. Licensed service companies, like licensed technicians, will be required to use the specific reporting form as required by the Secretary. These reporting

requirements are necessary to maintain the history of devices and work performed to detect patterns of compliance or noncompliance. Further, the reports will be the basis of data used in the Quality Compliance surveys.

Licensed service companies will be required to possess adequate testing equipment and to receive certification of the accuracy of that equipment from a National Institute of Standards and Technology certified laboratory on a yearly basis and may be required to meet other conditions prescribed by the Secretary to ensure the accuracy of weights and measures in the state.

The Secretary may fine and/or revoke the license of any service company that violates the statutes.

Service companies will not be responsible for actually removing devices from service; instead, they will concentrate on ensuring all devices are accurate. Service companies will be required to notify KDA of devices which should be removed from service. These devices include, for example, those which cannot be immediately repaired; those which will not hold weight for an adequate length of time after repair; those which are unrepairable; or those whose owner has refused to make necessary repairs. Once notified, it will be the responsibility of KDA inspectors to tag and remove devices from service. Tags may only be removed by licensed service company technicians in the course of repairing a device. All tags removed by technicians must be forwarded to KDA with the test report.

#### Device Owners

Under current law, owners of weighing and measuring devices are responsible for ensuring the accuracy of those devices. Devices must be certified for accuracy at least once a year, or more often if necessary to maintain their accuracy. Device owners will be responsible for maintaining all scale purchase, installation, removal from service or test records required by the Secretary in a form and place required by the Secretary. These records must be made available to the Secretary or the Secretary's authorized representative upon request.

Device owners will not be responsible for registering their devices, but will be required to have the device installed and annually certified by a licensed technician. The technician will then be required to notify KDA of the installation and provide all other device information required by the Secretary. This reporting will serve as a form of registration to ensure all devices in the state are in the statistical survey pools and subject to random inspection.

Device owners must comply with any order issued by the Secretary or the Secretary's representative concerning the accuracy of the device. For example, the Secretary or the Secretary's authorized representative will have the authority to remove from service or require repair of any device which is inaccurate. Unrepairable devices, for instance, may be ordered permanently removed from service by the Secretary or the Secretary's representative.

#### State Inspectors

State weights and measures officials and inspectors are also key to the success of this program. Performance of the service companies' work will be monitored through the Quality Control Program of statistical testing administered by weights and measures employees. Weights and measures officials will conduct marketplace tests, audit service company work, analyze data and provide testing and training opportunities for service company technicians.

## PUBLIC INSPECTIONS

Under this proposal, scanners and bulk products or packages will be inspected only by Kansas Department of Agriculture officials. No private service companies will be involved. A short description of the devices subject to total public inspection is outlined.

Scanners—in supermarkets, department and a variety of other stores—are a relatively new addition to the responsibilities of weights and measures officials. Assuring that prices scanned are the same as advertised is the function of price verification inspections. The inspection is not truly of the device, but rather of the accuracy of the price data regularly input into the store or chain's computer database. In turn, each scanner at a check-out counter is tied to the computer data base. The state's population of scanners, estimated by the numbers of establishments, is at around 7,000 and growing rapidly. The state is still developing its inventory of these devices. No service companies do price verification inspections.

Bulk sales/packages—it is almost impossible to estimate the population of this category, but it affects grocery stores, delicatessens and other establishments where bulk products are repackaged for individual sale. No private companies inspect bulk products or packages.

Because of the large numbers of scanners and bulk products or packages, statistical testing provides the best and most economically feasible method of inspection to ensure accuracy. Like the Quality Control Surveys discussed previously, the state will design a random statistical test based on the universe of scanners and packages. Analysis of data gathered through statistical testing will allow the Department to best allocate its resources to regions or stores where abuses are found. State inspectors will conduct statistical tests, follow up on consumer complaints and conduct investigations.

## FUELS—QUALITY AND QUANTITY

In addition to the regulatory programs outlined above, the Department will conduct fuel quality and quantity tests. Under this proposal, state inspectors of state-contracted inspectors will test all motor fuel and diesel meters in the state annually for quantity accuracy. State inspectors or state-contracted inspectors will conduct enforcement actions such as removing devices from service. Further, only these inspectors could certify devices for accuracy and use in commerce. These inspectors would also investigate consumer complaints and collect fuel samples. Again, these inspections would be done on a statistically random basis to monitor the marketplace and target enforcement. (A state-contracted inspector would be a person who has contracted to do the inspections for the state. These persons, under the terms of the contract, would not be allowed to repair devices.)

Under this proposal, service technicians must be licensed and trained, just as are those under the scale program. Service companies also must be licensed by the state.

The fuel quality laboratory testing will be done by a contracted private laboratory. There are no state facilities in Kansas capable of conducting these tests.

It is proposed that this program be funded by increasing the current one cent per barrel inspection fee, now assessed at the distributor's level, to one and one half cents. Further, the fee would be collected on all motor fuels and not just gasoline. This fee would generate approximately \$885,000.

## OTHER POINTS

### Civil Penalty

The agency is seeking civil penalty authority to enforce the programs outlined. Civil penalties for violation of this portion of the weights and measures law will range from \$100 to \$5,000 per violation. The Secretary will adopt rules and regulations which set out a graduated system of fines, from lesser amounts assessed for violations with minimal affect on device accuracy, to greater fines for violations with greater affect or which are based on fraudulent acts. Device owners' and service companies' good faith effort to comply with the law will be taken into account in all cases.

### Budget and Personnel

It is estimated that the current Governor's Budget of approximately \$675,000 and staffing of 15 full-time employees will be sufficient to operate the inspections of small scales, scanners, bulk sales and packages, large scales and VTM/propane devices. The Department, however, continues to work internally and with the Governor to obtain funding for equipment needs. Any additional requests will be outlined in a Governor's Budget Amendment this legislative session.

### Headhouse Scales

Headhouse scales are those at the top of elevators. The number of such scales is small. Under the new program, weighmasters with the Kansas Department of Grain Inspection will witness tests of the headhouse scales performed by private service companies. If questions as to the accuracy of the tests arise, inspectors with the Kansas Department of Agriculture will be called in to recheck the scales.

ATTENDEES OF DECEMBER 1995 DEVICE MEETINGS

CONTACT PERSON	COMPANY NAME	ADDRESS	CITY	ZIP CODE
Steve Rarrick	Attorney General's Office	301 W. 10th	Topeka Ks	BUILDING MAIL
Terresa Salts	Attorney General's Office	301 W. 10th	Topeka Ks	BUILDING MAIL
Casey Boequin	C & L Scales	1105 N.E. Chester Ave	Topeka KS	66616
Chelmar E. Finger	C & J CALIBRATION SERVICE	400 Cherokee	Holton KS	66436
Marvin G. Spees	CAPITAL CITY OIL, INC.	916 Adams, Box 618	Topeka KS	66601-0618
Stephen Langford	Cardinal Scale Mfg. Co.	P.O. Box 151	Webb City MO	64870
Bob Gunja	City of Kansas City, Kansas Weights & Measures Division	701 N. 7th Street, Room 612	Kansas City KS	66101
Brenda Kincaid	City of Kansas City, Kansas Weights & Measures Division	701 N. 7th Street, Room 612	Kansas City KS	66101
Donna Gandey	DOUBLE CHECK CO., INC.	Box 300347, 4000 Raytown Rd.	Kansas City MO	64130
Terry L. Sells	DOUBLE CHECK CO., INC.	Box 300347, 4000 Raytown Rd.	Kansas City MO	64130
LeRoy Durst	DURST SERVICE CO.	P.O. Box 791, 514 N. Grand	Hutchinson KS	67504
Brad Enlow	ENLOW SALES CO.	P.O. Box 1546	Manhattan KS	66502
Frank J. Ferrara	FLOW CONTROL SALES & SVC., INC.	1932 Linn Street	N. Kansas City MO	64116
Rick Hughes	FLOW CONTROL SALES & SVC., INC.	1932 Linn Street	N. Kansas City MO	64116
Jack Unterreiner	FLOW CONTROL SALES & SVC., INC.	1932 Linn Street	N. Kansas City MO	64116
Gene & Louise Gamble	GENE'S SCALE SERVICE	1600 E. Highway 96	Scott City KS	67871
Mike Townsend	GOOD MEASURE CORPORATION	1906 Linn Street	North Kansas City MO	64116
Roger Marshall	HAMILTON SERVICE CO., INC.	7237 Verde Drive	Kansas City KS	66109
Dale Lies	HAMMEL SCALE CO.	1530 N. Mosley	Wichita KS	67214
Russ Ronnebaum	HAMMEL SCALE CO.	1530 N. Mosley	Wichita KS	67214
Ralph E. Taylor	HAMMEL SCALE OF K.C., INC.	612 Kansas Avenue	Kansas City KS	66105
David Clarkson	HOBART SALES/JOPLIN	Box 358, Rt. 3	Joplin MO	64802

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CONTACT PERSON	COMPANY NAME	ADDRESS	CITY	ZIP CODE
Victor E. Perry	VAN DYKE SCALE, INC.	Box 6244, 2825 Raytown Road	Kansas City MO	64126
Donald D. Weese	VAN DYKE SCALE, INC.	Box 6244, 2825 Raytown Road	Kansas City MO	64126
Tom Waggle	W.H. Scale Company	4145 N.W. 25th Street	Topeka KS	66618
Monica Williams	WILLIAMS PIPE LINE CO.	2728 Patton Road	St. Paul MN	55113
Jacob Jenkin	YOXALL PUMP SERVICE	327 S. First	Osborne Ks	67473
John Yoxall	YOXALL PUMP SERVICE	Rt. 1, P.O. Box 124	Woodston KS	67675

3-9





# Propane Marketers Association of Kansas

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Lee Eisenhauer  
Executive Vice-President

WRITTEN TESTIMONY  
February 19, 1996

To: Senate Agriculture Committee

From: Lee Eisenhauer, Executive Vice-President  
Propane Marketers Association of Kansas

Re: **Senate Bill 705**

Mr. Chairman and Members of the Committee:

Representatives of the propane industry in Kansas, along with other industries regulated by the Weights and Measures Division of the Kansas Department of Agriculture, have been working with the secretary of agriculture, her staff, and Weights and Measures, to develop methods of improving the administration and procedures of weights and measures.

We basically agree with the changes in administration set forth in Senate Bill 705; but would, additionally, ask consideration of the following:

1. Not specified in the bill is our agreement that *state inspectors should receive the same training and testing as the service companies and technical representatives; and that training should be meaningful* - not "stock" year after year, as in the past.
2. *Should the Agriculture Advisory Board be included in adopting standards and regs?*

Since the media coverage of the problems encountered focused on whether the consuming public is being "cheated", and the Performance Audit Report provided to you by the Legislative Division of Post Audit listed the proportion of inaccurate weighing and measuring devices per the Department's statistical sampling last fall, I would like to provide additional information regarding the inaccuracy rates for bulk fuel meters listed on page 8 of the Report.

The Report lists 40% inaccuracy, but also stated, "*However, for large scales and bulk fuels meters, the Department was unable to check large enough samples of devices. As a result, the Department is less confident in its results for those types of devices.*"

-more-

*Senate Ag Co  
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We were told that the statistical testing of the fuel meters included only **20 propane meters (out of the approximately 783 in the state)** and 61 VTM's (out of approximately 2,400). It is not reported whether the inaccuracies were + or -, how long it had been since they were last tested, etc. As a propane meter wears with use, unless it has a mechanical failure, it will give the consumer product, not cheat him/her. And, if the marketer is giving away product, he/she will soon be aware of that fact through inventory control. So, when there are inaccuracies found in the operation of propane meters, the majority of the time the customer comes out ahead (minimal as it may be). Also, a meter is, of course, a mechanical device with numerous intricate working parts; and, like any part of any type of working mechanism, can malfunction without prior warning.

Propane marketers have their meters tested once a year, as required by law, and those whose meters register large amounts of product have them tested more often, to assure accuracy.

There are only eight service companies licensed to test propane meters in Kansas and, of those, three or four provide the majority of the service, and are well-known to industry people to offer honest, reliable service.

We realize the propane industry does not affect millions of public consumers each day as do gas pumps and scales, but these published statistics mislead you and the consumer to believe there is intentional dishonesty on the part of all marketers, and that is not the case. If you live in a rural area, particularly, you undoubtedly know the marketers in your district to be honest, hard-working business people; and, in most cases, are neighbors and friends of their propane customers.

We support Senate Bill 705 and the efforts of the secretary of agriculture to improve the integrity of the Weights and Measures Division and, hopefully, reassure public confidence.

I would be happy to visit with you at any time, if you have questions, as would the propane marketers in your districts.

Thank you for your consideration.

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JIM SHEEHAN  
Shawnee Mission

February 19, 1996

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FRANCES KASTNER

**SENATE AGRICULTURE COMMITTEE**

**SUPPORTING SB 705**

We appreciate the opportunity to present testimony before your committee today in support of SB 705.

Our membership consists of retailers, distributors, and manufacturers of food products. We participates in all the meetings which Secretary Devine held last fall and included representatives of the various industries involved in the Weights and Measures Program.

All of our concerns and comments were taken into consideration in the drafting of the language you have before you, and we are in support of it.

We sincerely hope you will recommend SB 705 favorably, and let the Secretary get on with correcting any problems within the Weights and Measures program.

*Don Snodgrass*  
Don Snodgrass  
Lobbyist, KFDA

*Frances Kastner*  
Frances Kastner, Director  
Governmental Affairs, KFDA

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The following statement is submitted on behalf of both the Kansas Grain and Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA). While the two agribusiness associations share staff, they have distinct memberships, separate boards of directors and association programs. KGFA's 1200 members include country elevators – both independent and cooperative – subterminal and terminal elevators, feed manufacturers, grain merchandisers and others who serve the industry. KFCA's nearly 500 members are primarily plant nutrient and crop protection retail dealers, but also include manufacturer's representatives, distribution firms, and equipment manufacturers. We appreciate this opportunity to outline our support of S.B. 705.

Scales are used throughout the grain, feed, fertilizer and agriculture chemical industry. The most predominate are the large truck scales used to weigh grain, feed and fertilizer. There are also fertilizer blender scales, platform scales to weigh mini-bulks and bag feed, and scales to weigh ounces of agriculture chemical products. Also, unique to the grain industry are the headhouse scales that weigh grain as it goes into railcars. All of these types of scales are an integral part of doing business and since agriculture inputs and commodities are sold by weight, scale accuracy is of the utmost importance to a firm's bottomline.

KGFA and KFCA support the concept of privatization of the weights and measures program. It is our belief that the bulk of the problems outlined in the Legislative Post Audit report were caused by lack of oversight and enforcement of the law, as well as virtually no consideration of program and system design to confidently predict device accuracy. KGFA and KFCA also support the use of random sampling as a cost-effective and reliable method to ensure the accuracy of scales across the state.

S.B. 705 addresses the many facets of the weights and measures program. It establishes civil penalties for violations of the entire statute not just the portions dealing with petroleum. KGFA and KFCA support this proposal (New Section 1). Both Associations are especially supportive of (b)(5) which allows the Secretary to consider any and all relevant circumstances when determining the amount of the penalty. A situation may arise when a scale owner trusts the

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expertise of the service company on methodology of scale testing and later finds that it is not appropriate. KGFA and KFCA believe that (b)(5) would allow the Secretary to take this type of situation into consideration.

S.B. 705 also establishes licensing, testing and continuing education requirements for all service company technicians. KGFA and KFCA support these provisions. We believe these requirements will bring a greater professionalism to the scale service industry. Within the fertilizer and agriculture chemical application industry, applicators must be licensed and many are voluntarily part of the certified crop advisor (CCA) program that consists of a national exam, a state exam and 40 hours of continuing education in four areas every two years. Given our experience with such programs, we do not believe the requirements of S.B. 705 to be overly burdensome. Both Associations also suggest that weights and measures inspectors be held to the same high standards.

KGFA supports supervision of headhouse scale certification by the Kansas Grain Inspection Department (KGID). Section 2 (b) gives the Secretary of Agriculture and KGID the authority to enter into an agreement to begin having KGID weighmasters observe private scale companies test headhouse scales. This is important to the grain industry because the issuance of Class I and Class II weight certificates<sup>1</sup> hinge on the headhouse scale being tested twice per year and certified by a neutral third party. Prior to 1992, the American Association of Railroads (AAR) employed field personnel who went around and made sure headhouse scales were tested each year. Elevators were required to pay a \$250 annual fee for this service and felt it was too high. So, KGFA worked with the National Grain and Feed Association and the Kansas City Board of Trade to amend the grain trade rules and allow a neutral third part -- the Kansas Department of Agriculture (KDA) -- to perform this service. When it was privatized last year, KDA oversight continued to be acceptable.

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<sup>1</sup> In order to minimize risk, elevators that load railcars obtain either a Class I or Class II weight certificate. These certificates are used to insure no overweight charges by the railroad -- which are hefty -- and so that elevators do not have to rely on weights issued when the railcars reach their destination. Further, if there is a railcar accident, these certificates are used for repayment. KGID personnel -- weighmasters -- supervise the loading of these railcars and then issue the certificates.

Further, certified weights are required under Uniform Grain and Rice Storage Agreements (UGRSA) which are renewed annually. They too changed the language of the agreements to allowed for a neutral third party to certify headhouse scales were accurate. Consequently, State of Kansas involvement in the headhouse scale program is imperative to the orderly marketing of grain under the grain trade rules. Further, KGID estimates that over the past three years, they have issued certificates on an average of 132,683 cars of grain and earned an average of \$535,256 annually. Supervision of weight certification by the KGID weighmasters will meet the third party requirement of the grain trade rules and UGRSA, as well as provide KDA with compliance assurance.

In closing, KGFA and KFCA would also point out that the grain and agriculture input industries are somewhat unique relative to scales -- the market itself provides a built-in set of checks and balances since goods are bought and sold over the same scales. Consequently, any inaccuracy impacts the company in the same manner as the producer. Further, since most products are sold by weight and go to entities that also have scales, inaccuracies are quickly brought to light. This natural system of checks and balances is bolstered by the fact that nearly 80%<sup>2</sup> of the industry has only one large truck scale and therefore must buy and sell over that scale. Further, 98% of the industry reports they buy and sell over the same scale. Another unique fact about the grain, feed, fertilizer and agriculture chemical industry is that 71% of the firms have their scales check more than once per year as required by law. Normally, firms check their scales before each harvest. The average scale check period is every 7.65 months and if one examines those who only have their scale checked annually, it is apparent that they are in an area of the state that only has one harvest.

If you have questions, please contact Jamie Clover Adams, Vice President Government Affairs at 913-234-0461.

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<sup>2</sup> KGFA and KFCA conducted a statistically valid random sample of the industry to obtain the facts contained in this report.