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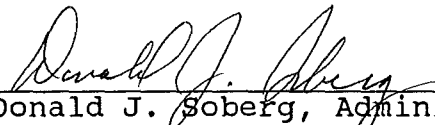
Revisor of Statutes
Bureau

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF AGRICULTURE,)
TRADE AND CONSUMER PROTECTION)

I, Donald J. Soberg, Administrator of the Division of Trade and Consumer Protection, Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the official records, certify that the annexed rules, relating to labeling plastic containers for recycling, reclamation and reuse, were duly approved and adopted by this department on October 10, 1990.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Agriculture, Trade and Consumer Protection at 801 West Badger Road in the city of Madison, this 10th day of October 1990.



Donald J. Soberg, Administrator
Division of Trade and Consumer
Protection, Wisconsin Department of
Agriculture, Trade and Consumer
Protection



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ORDER OF
THE STATE OF WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER PROTECTION

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following order to create Ag 57, relating to labeling plastic containers for recycling, reclamation and reuse.

Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection

Statutory authority: s. 100.33 (2), Stats.
Statute interpreted: s. 100.33, Stats.

1987 Wisconsin Act 293 created s. 100.33, Stats., a statute requiring that plastic containers be labeled to promote their recycling, reclamation and reuse. This law prohibits selling plastic containers, or products in plastic containers, unless the containers are labeled with information needed by recyclers.

Section 100.33, Stats., has a staggered effective date, depending on the size and type of the container and whether it is sold at wholesale or retail:

<u>Type and Size of Container</u>	<u>Effective Date Wholesale Sales</u>	<u>Effective Date Retail Sales</u>
16 oz. and larger containers in general	01/01/91	01/01/92
16 oz. and larger non-beverage bottles	"	"
8 oz. and larger beverage bottles	"	"
8 oz. and larger containers in general	01/01/92	01/01/93
8 oz. and larger non-beverage bottles	01/01/93	01/01/94

The department of agriculture, trade and consumer protection created an advisory committee to help formulate these rules. The committee consisted of recyclers, plastics industry representatives, container manufacturers, plastic container users and representatives of environmental groups. It reviewed a variety of rule drafts and approved the content of this order. Changes to s. 100.33, Stats., in the 1989-91 biennial budget bill and in the 1990

recycling bill (1989 Wisconsin Act 335) caused the department to redraft these rules before submitting them for legislative committee review. The rules define the scope of s. 100.33, Stats., establish proper labeling requirements and create a method by which container manufacturers can seek an exemption from the labeling requirements.

The order specifies what plastic containers are covered by the law. It states that plastic cups are considered "cartons" (a type of container included within the statutory definition of "plastic container") and must be labeled like other plastic containers, if their original use will be to hold a product for retail sale. The order excludes container lids, trays used to hold meat or other foods for retail sale and plastic one-half pint, one pint or one quart baskets used to hold berries or other foods for retail sale.

The order requires all regulated plastic containers to be labeled with a triangular symbol and a code for identifying the plastic resin used in the container. The label can be molded, imprinted or otherwise attached to the container, in conformity with the requirement in s. 100.33 (2), Stats., that manufacturers and persons placing products in plastic containers be able to "choose an appropriate method of labeling plastic containers". Inside the triangle must be placed a number and below the triangle a series of letters identifying the resin used, as follows:

- (a) For polyethylene terephthalate, "1" and "PETE".
- (b) For high density polyethylene, "2" and "HDPE".
- (c) For polyvinyl chloride, "3" and "V".
- (d) For low density polyethylene, "4" and "LDPE".
- (e) For polypropylene, "5" and "PP".
- (f) For polystyrene, "6" and "PS".
- (g) For combinations of resins or other resins, "7" and "OTHER".

Generally, plastic containers not entirely composed of a single resin must be labeled "7" and "OTHER". Plastic containers whose labels or base cups are composed of different resins, though, may be labeled according to the container's principal resin. For example, soda bottles are principally made of polyethylene terephthalate, but they also include a base cup of a different resin. This order allows soda bottles to be labeled "1" and "PETE".

The triangle in the symbol must be at least one-half inch high and the numbers and letters must be at least one-fourth the height of the triangle, unless the plastic container is designed such that a label of this size cannot be added to it. If so, a smaller label may be used, but it must be easily read at a glance.

The order relies primarily on the plastic container coding system developed by the national society of the plastics industry,

practicable, with national industry-wide plastic container coding systems". Section 100.33 (2), Stats.

The order allows the department to grant a variance from labeling requirements if the person requesting a variance can prove it is technologically impossible to label a particular type of plastic container. Under s. 100.33 (3m), Stats., such variances initially last up to one year but may be renewed.

SECTION 1. Chapter Ag 57 is created to read:

CHAPTER Ag 57
LABELING PLASTIC CONTAINERS FOR
RECYCLING, RECLAMATION AND REUSE

Ag 57.01 AUTHORITY. This chapter is promulgated pursuant to s. 100.33, Stats.

Ag 57.03 DEFINITIONS. The definitions set forth in s. 100.33, Stats., apply to this chapter. For the purpose of interpreting s. 100.33, Stats., and this chapter:

(1) "Carton" includes an individual, separate, rigid plastic cup, if the cup is originally used to contain a product that is the subject of a retail sale.

(2) "Container" does not include:

(a) A container's lid.

(b) A tray originally used to contain meat or other foods for retail sale.

(c) A one quart or smaller mesh basket originally used to contain berries or other foods for retail sale.

(d) A container used to hold pesticides.

(3) "Department" means the department of agriculture, trade and consumer protection.

(4) "Rigid" means relatively inflexible and self-supporting when empty.

NOTE: The above definitions provide additional detail to the larger definition of "plastic container" in s. 100.33 (1) (c), Stats., which is as follows:

100.33 (1) (c) "Plastic container" means an individual, separate, rigid plastic bottle, can, jar or carton, except for a blister pack, that is originally used to contain a product that is the subject of a retail sale, as defined under s. 100.30 (2) (h).

Section 100.33 (1) (ad), Stats., defines "blister pack" as a "container in which an item has a covering of plastic film or preformed semirigid plastic and the covering is affixed to a rigid backing." Blister packs are used to package various items, such as lunch meat, hardware and sporting goods that are displayed by hanging the blister packs from hooks.

Under the definition of "plastic container", empty plastic cups sold at retail (such as those sold in quantities of 50 for picnics) are not required to be labeled because they are not "originally used to contain a product that is the subject of a retail sale". On the other hand, empty plastic cups a wholesaler sells to a retailer, which the retailer will fill in order to sell a beverage, must be labeled.

Plastic containers used to hold pesticides can be recycled, but only in accordance with the pesticide label's directions. In most situations, containers holding pesticides cannot be reused. See ch. Ag 29 for other rules regarding pesticide use and disposal.

Ag 57.05 LABELING. (1) TRIANGULAR SYMBOL. Each plastic container regulated under this chapter and under s. 100.33, Stats., shall have a triangular symbol molded, imprinted or otherwise attached. Inside the triangle shall be a number and below the triangle shall be a series of letters identifying the resin used in the plastic container, as specified in sub. (2).

(2) IDENTIFICATION OF RESIN. To identify the resin used in a plastic container, the following codes are required as part of the symbol under sub. (1):

(a) If the plastic container is made of polyethylene

terephthalate, the number "1" and the letters "PETE" with the symbol.

(b) If the plastic container is made of high density polyethylene, the number "2" and the letters "HDPE" with the symbol.

(c) If the plastic container is made of polyvinyl chloride, the number "3" and the letter "V" with the symbol.

(d) If the plastic container is made of low density polyethylene, the number "4" and the letters "LDPE" with the symbol.

(e) If the plastic container is made of polypropylene, the number "5" and the letters "PP" with the symbol.

(f) If the plastic container is made of polystyrene, the number "6" and the letters "PS" with the symbol.

(g) If the plastic container is made of other resins or of multiple resins, the number "7" and the word "OTHER" with the symbol. A plastic container whose label or base cup is composed of a different resin shall be labeled according to the container's principal resin.

(3) LABEL SIZE. (a) Except as provided in par. (b), the height of the triangle required under sub. (1) shall be at least one-half inch. The numbers and letters required under sub. (2) shall be at least one-fourth the height of the triangle.

(b) If a plastic container is designed such that a label of the size specified in par. (a) cannot be added to it, a smaller label may be used, if the label can be easily read at a glance.

NOTE: Using a recycling symbol would satisfy the requirement that a triangular symbol be incorporated in

the label, such as the following examples shown below. A simple triangle can be substituted for the recycling arrows.



LDPE



PS



HDPE

The prohibition against selling unlabeled plastic containers in s. 100.33, Stats., applies to sales and offers to sell made by manufacturers, distributors, those who place products in regulated plastic containers and retailers. The law does not specifically impose the duty to label on any one of these parties, but s. 100.33 (2), Stats., conveys an intent that primary labeling responsibility will fall first on plastic container manufacturers and next on those who place products in plastic containers.

Ag 57.07 VARIANCES. The department may grant a variance from this chapter, as provided in s. 100.33 (3m), Stats., if the requester can prove that labeling a type of plastic container is technologically impossible.

Ag 57.11 PENALTY. Each violation of these rules is subject to a forfeiture of not more than \$500, as provided in s. 100.33 (4), Stats. Each day of violation constitutes a separate offense.

NOTE: Section 100.33 (3), Stats., staggers the dates when the labeling requirements for plastic containers first apply:

<u>Type and Size of Container</u>	<u>Eff. Date Wholesale Sales</u>	<u>Eff. Date Retail Sales</u>
16 oz. and larger containers in general	01/01/91	01/01/92
16 oz. and larger non-beverage bottles	"	"
8 oz. and larger beverage bottles	"	"
8 oz. and larger containers in general	01/01/92	01/01/93
8 oz. and larger non-beverage bottles	01/01/93	01/01/94

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Dated this 10th day of October, 1990.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Donald J. Soberg
Donald J. Soberg, Administrator
Trade & Consumer Protection Division

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