

## Chapter ATCP 137

### ENVIRONMENTAL LABELING OF PRODUCTS

#### Subchapter I — Recycled, Recyclable or Degradable Products

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#### Subchapter I — Recycled, Recyclable or Degradable Products

**ATCP 137.01 Scope and authority.** This subchapter is adopted under ss. 100.20 (2) and 100.295, Stats. This subchapter applies to representations made for any product that is sold or leased, offered for sale or lease, or promoted or distributed for sale or lease at wholesale or retail. This subchapter applies to oral, written or graphic representations including advertisements, product labels, statements made in the print or broadcast media, and representations made in the form of trademarks, logos, symbols or trade names.

**History:** Cr. Register, January, 1994, No. 457, eff. 2-1-94; am. Register, February, 1996, No. 482, eff. 3-1-96.

#### ATCP 137.02 Definitions.

In this subchapter:

(1) “Decomposition” means the biological, chemical, photochemical, or other physical process by which an organic substance is broken down and its molecular structure dismantled into soluble nutrients, minerals, inorganic compounds, simple organic compounds found in nature, carbon dioxide, methane or water, or any combination of those breakdown products.

(2) “Department” means the state of Wisconsin department of agriculture, trade and consumer protection.

(3) “Organic substance” means a natural or synthetic substance consisting of, derived from, or chemically related to carbon compounds in which hydrogen is bonded to carbon.

(4) “Package” means any container, wrapping or packing material in which a product is contained or enclosed.

(5) “Person” means an individual, corporation, partnership, association or other business organization or entity.

(6) “Post-consumer material” means a product or other material generated by a business or consumer that has served its intended end use and has been recovered or diverted from the solid waste stream for purposes of recycling.

(7) “Pre-consumer material” means material generated during any step in the production of a product that has been recovered or diverted from the solid waste stream for the purpose of recycling. “Pre-consumer material” does not include the virgin content of scraps or by-products generated and reused within the original product manufacturing process.

(8) “Product” means a manufactured article, good, commodity, package or container that is sold or leased, offered for sale or lease, or promoted or distributed for sale or lease at wholesale or retail. “Product” includes a package or container that accompanies, encloses or contains another product.

(9) “Recycled material” means pre-consumer material or post-consumer material, or both.

(10) “Represent that a product is degradable” means to represent directly or by implication, through the use of any words or images, that a product is capable of complete or partial decom-

position, and includes any representation that a product is biodegradable, photodegradable, compostable or decomposable.

(11) “Represent that a product is recyclable” means to represent directly or by implication, through the use of any words or images, that a product is entirely or partly composed of materials that can be recovered from the solid waste stream and used in the manufacture of other products.

(12) “Represent that a product is recycled” means to represent directly or by implication, through the use of any words or images, that a product is entirely or partly composed of recycled material.

(13) “Representation” means any oral, written or pictorial representation made in connection with the sale, lease, offering for sale or lease, promotion or distribution of a product. “Representation” includes advertisements, product labels, statements made in the print or broadcast media, and representations made in the form of trademarks, logos, symbols or trade names.

**History:** Cr. Register, January, 1994, No. 457, eff. 2-1-94; am. (intro.), Register, February, 1996, No. 482, eff. 3-1-96.

**ATCP 137.03 General prohibitions.** (1) No person may represent, directly or by implication, that a product is recycled, recyclable or degradable if the representation is false, deceptive or misleading.

(2) No person may represent, directly or by implication, that a product is recycled, recyclable or degradable if the representation violates this chapter.

**History:** Cr. Register, January, 1994, No. 457, eff. 2-1-94.

**ATCP 137.04 Degradability representations.** (1) No person may represent, without qualification, that a product is degradable unless all of the following apply under customary conditions of use and disposal in the area where the product is sold:

(a) The product decomposes completely to the point that it is entirely broken down into soluble nutrients, minerals, inorganic compounds, simple organic compounds found in nature, carbon dioxide, methane or water, or any combination of those breakdown products.

(b) The product decomposes completely within a reasonably short period of time compatible with normal conditions of use or disposal of the product.

(c) The product’s decomposition does not release any contaminant or substance at a level that violates state or federal environmental quality standards, or that is toxic to persons or the environment.

(2) If a product does not meet all of the requirements under sub. (1), no person may represent that the product is degradable unless the representation is qualified to the extent necessary to avoid consumer deception.

(3) No person may misrepresent, directly or by implication, any of the following:

(a) That a product is degradable under customary conditions of use and disposal in the area where the product is sold. If a product is not degradable under customary conditions of use and dis-

posal, the representation shall specify the conditions of use and disposal under which the product is degradable. If a specified disposal method is not available to a substantial majority of the population in the area where the product is sold, the representation shall clearly disclose that it may not be available.

(b) That a product is compostable in home composting piles or devices. If composting is specified as a method of disposal, the representation shall clearly indicate whether the product can be safely and effectively composted at home.

(c) The rate or extent to which a product will decompose under customary conditions of use and disposal in the area where the product is sold, or under specified conditions of use and disposal.

(4) A label only used at wholesale by a manufacturer of connectors for beverage containers as defined in s. 134.77 (1) (b), Stats., representing compliance with s. 134.77 (3), Stats., to packagers of beverages as defined in s. 134.77 (1) (a), Stats., does not constitute a representation, for purposes of this section, that a plastic beverage connector is degradable.

(5) No person may represent that a product is degradable unless both of the following apply:

(a) The representation complies with s. ATCP 137.07.

(b) The person can substantiate the representation under s. ATCP 137.08.

**History:** Cr. Register, January, 1994, No. 457, eff. 2-1-94; am. (4), Register, February, 1996, No. 482, eff. 3-1-96.

**ATCP 137.05 Recyclability representations.** (1) No person may represent, without qualification, that a product is recyclable unless the product is entirely composed of materials that satisfy all of the following requirements:

(a) The materials can be collected, separated or otherwise recovered from the solid waste stream by recycling systems that are readily available to a substantial majority of the population in the area where the product is sold, using normal methods of operation.

(b) The materials recovered under par. (a) can, by means of established commercial processes, be processed and reused as raw materials for the manufacture of new products.

(2) If a product does not meet all of the requirements under sub. (1), no person may represent that the product is recyclable unless the representation is qualified to the extent necessary to avoid consumer deception.

(3) No person may misrepresent, directly or by implication, any of the following:

(a) That recycling systems needed to recycle the product are readily available in the area where the product is sold. If suitable recycling systems are not readily available to a substantial majority of the population in the area where the product is sold, or if those systems do not ordinarily accept the product for recycling, no person may represent that the product is recyclable unless the representation clearly discloses that suitable recycling facilities may not be available.

(b) That the product is compatible with suitable recycling systems that are readily available in the area where the product is sold. If, because of the product's size or shape, or for any other reason, a product is incompatible with recycling systems, no person may represent that the product is recyclable.

(4) An identifying symbol placed on a plastic container to comply with subchapter II does not constitute a representation, for purposes of this subchapter, that the container is recyclable.

(5) No person may represent that a product is recyclable unless both of the following apply:

(a) The representation complies with s. ATCP 137.07.

(b) The person can substantiate the representation under s. ATCP 137.08.

**History:** Cr. Register, January, 1994, No. 457, eff. 2-1-94; am. (4), Register, February, 1996, No. 482, eff. 3-1-96.

#### **ATCP 137.06 Recycled content representations.**

(1) No person may represent, without qualification, that a product is recycled, or that it contains or is made from recycled material, unless at least one of the following applies:

(a) The entire product consists of, or is made from, recycled material.

(b) The representation clearly identifies, to the nearest 5% or closer, the minimum percentage by weight of the product that constitutes or is made from recycled material. For paper products, recycled content may be expressed as a percentage of fiber content in the product rather than a percentage by weight of the product.

(2) No person may represent that a product contains or is made from "post-consumer material" or "pre-consumer material" unless the use of those terms conforms to the definitions under s. ATCP 137.02 (6) and (7).

(3) If any person represents that a product contains or is made from "post-consumer material" or "pre-consumer material," the representation shall clearly identify, to the nearest 5% or closer, the product's minimum percentage content of that material, by weight. For paper products, the percentage content of post-consumer or pre-consumer material may be expressed as a percentage of fiber content rather than a percentage by weight.

(4) No person may represent that a product is recycled, that it contains or is made from recycled material, or that it contains or is made from "post-consumer material" or "pre-consumer material" unless both of the following apply:

(a) The representation complies with s. ATCP 137.07.

(b) The person can substantiate the representation under s. ATCP 137.08.

**History:** Cr. Register, January, 1994, No. 457, eff. 2-1-94.

#### **ATCP 137.07 Form and content of representations.**

No person may represent that a product is recycled, recyclable or degradable unless the representation complies with all of the following:

(1) If the representation is not valid for the entire product, the representation shall clearly identify the specific parts of the product for which the representation is valid. If a representation is valid for a product, but invalid for a closure, fastener or similar minor component of the product, the representation need not specify that the representation does not apply to that minor component unless failure to do so affects the validity of the representation for the rest of the product.

(2) The representation shall clearly identify the product manufacturer, distributor, lessor or seller responsible for the representation. If the representation is made as part of a product label, it shall include the responsible person's business address, including street address, city, state and zip code, except that the street address may be omitted if the address can be found under the name of the responsible person in a current city directory or telephone directory.

(3) If a representation is required to include any disclosure or qualifying statements under this subchapter, the disclosures and qualifying statements shall be clear and conspicuous in relation to the representation.

**History:** Cr. Register, January, 1994, No. 457, eff. 2-1-94; am. (3), Register, February, 1996, No. 482, eff. 3-1-96.

#### **ATCP 137.08 Substantiating representations.**

(1) No person may represent that a product is recycled, recyclable or degradable unless that person can substantiate the representation at the time the representation is made. The substantiation shall be all of the following:

(a) Adequate to support every direct and implied claim made in the representation.

(b) Based on competent and reliable evidence consisting of tests, analyses, research, studies or other evidence developed and evaluated in an objective manner by persons qualified to do so,

using procedures that are generally accepted in the profession as yielding accurate and reliable results.

(c) Adequate to prove that the representation is not false, deceptive or misleading.

(d) Adequate to support the representation under reasonably foreseeable conditions specified or implied in the representation.

(2) No document or other evidence may be used to substantiate a representation under sub. (1) unless the person making the representation possessed that document or evidence at the time the representation was made, and relied upon that document or evidence in making the representation.

(3) If any person represents that a product is recycled, recyclable or degradable, the department may issue a written notice to that person requiring that person to provide the department with the evidence upon which that person relied to substantiate the representation at the time the representation was made. The person making the representation shall submit the required evidence to the department within 45 days after the request is made, unless the department grants an extension of time.

**History:** Cr. Register, January, 1994, No. 457, eff. 2-1-94.

**ATCP 137.09 Special orders.** The department may, by special order under s. 100.20 (3), Stats., prohibit any person from violating this chapter, and require that person to take specific action to correct the violation. A special order under s. 100.20 (3), Stats., is not a prerequisite to other enforcement action and does not preclude other enforcement action.

**Note:** See ch. ATCP 1 related to procedure in special order cases.

**History:** Cr. Register, January, 1994, No. 457, eff. 2-1-94.

## Subchapter II — Plastic Containers; Labeling for Recycling

**ATCP 137.11 Authority.** This subchapter is promulgated pursuant to s. 100.33, Stats.

**History:** Cr. Register, November, 1990, No. 419, eff. 12-1-90; renum. from ATCP 135.01 and am., Register, February, 1996, No. 482, eff. 3-1-96.

**ATCP 137.12 Definitions.** The definitions set forth in s. 100.33, Stats., apply to this subchapter. For the purpose of interpreting s. 100.33, Stats., and this subchapter:

(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. ATCP 29 for other rules regarding pesticide use and disposal.

**History:** Cr. Register, November, 1990, No. 419, eff. 12-1-90; renum. from ATCP 135.03 and am. (intro.), Register, February, 1996, No. 482, eff. 3-1-96.

**ATCP 137.13 Labeling. (1) TRIANGULAR SYMBOL.** Each plastic container regulated under this subchapter 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.

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.

**History:** Cr. Register, November, 1990, No. 419, eff. 12-1-90; renum. from ATCP 135.05 and am. (1), Register, February, 1996, No. 482, eff. 3-1-96.

**ATCP 137.14 Variances.** The department may grant a variance from this subchapter, as provided in s. 100.33 (3m), Stats., if the requester can prove that labeling a type of plastic container is technologically impossible.

**History:** Cr. Register, November, 1990, No. 419, eff. 12-1-90; renum. from ATCP 135.07 and am., Register, February, 1996, No. 482, eff. 3-1-96.

**ATCP 137.15 Penalty.** Each violation of this subchapter 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.

Type and Size of Container	Eff. Date Wholesale Sales	Eff. Date Retail Sales
16 oz. and larger containers in general	01/01/91	01/01/92
16 oz. and larger nonbeverage bottles	01/01/91	01/01/92
8 oz. and larger beverage bottles	01/01/91	01/01/92
8 oz. and larger containers in general	01/01/92	01/01/93
8 oz. and larger nonbeverage bottles	01/01/93	01/01/94

**History:** Cr. Register, November, 1990, No. 419, eff. 12-1-90; renum. from ATCP 135.11 and am., Register, February, 1996, No. 482, eff. 3-1-96.