

Chapter ATCP 90

PACKAGING AND LABELING

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History: Chapter ATCP 90 as it existed on May 31, 1973 was repealed and a new chapter ATCP 90 was created, Register, May, 1973, No. 209, eff. 6-1-73; Chapter Ag 53 was renumbered Chapter ATCP 90 under s. 13.93 (2m) (b) 1, Stats., Register, April, 1993, No. 448.

**ATCP 90.01 Applicability.** This chapter shall apply to consumer packages and commodities in package form, but shall not apply to:

(1) Inner wrappings not individually sold to the consumer.

(2) Shipping containers or wrapping used solely for the transportation of commodities in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors, but in no event shall this exclusion apply to packages of consumer commodities, as defined herein.

(3) Auxiliary containers or outer wrappings used to deliver consumer packages to retail customers if such containers or wrapping bear no printed matter pertaining to any particular commodity.

(4) Containers used for retail tray pack displays of consumer packages when the container itself is not to be sold with the commodities contained therein (e.g., the tray that is used to display individual packages of commodities, such as seasonings or gravies, and the tray itself is not to be sold).

(5) Commodities packaged in variable weights and sizes by the retailer for weighing or measuring at the time of sale at retail, where no quantities are represented, and tare weights are known or can readily be determined, and the commodities are weighed or measured in the presence of the customer so that the customer can read the indicating element on the scale or determine other quantities in which the commodity is being sold.

(6) Open carriers and transparent wrappers or carriers for containers when the wrappers or carriers do not bear any written, printed, or graphic matter obscuring the label information required under these rules.

History: Cr. Register, May, 1973, No. 209, eff. 6-1-73; am. (5), Register, April, 1975, No. 232, eff. 5-1-75.

**ATCP 90.02 Definitions.** (1) "Commodity in package form" means a commodity packaged in any manner in advance of sale in units suitable for sale at wholesale or retail. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per

unit of weight or of measure, shall be construed to be a commodity in package form. Where the term "package" or "commodity" is used in these rules, it shall be construed to mean "commodity in package form" as herein defined.

(2) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(3) "Random package" means a package that is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights, or with no fixed pattern of weight.

(4) "Label" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed into, molded into, embossed on, or appearing upon or adjacent to a consumer commodity or a package containing any consumer commodity, for purposes of branding, identifying, or giving any information with respect to the commodity or to the contents of the package, except an inspector's tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be deemed to be a label requiring the repetition of label information required under these rules.

(5) "Person" means any individual, partnership, company, corporation, association, society, business organization or entity.

(6) "Principal display panel" means that part, or those parts of a package which with its label is, or are, so designed as to most likely to be displayed, presented, shown, or examined under normal and customary conditions of display and purchase. Wherever a principal display panel appears more than once on a package, all requirements pertaining to the "principal display panel" shall pertain to all such "principal display panels."

(7) "Multi-unit package" means a package containing 2 or more individual packages of the same commodity, in the same quantity, which are to be sold as part of the multi-unit package but capable of being individually sold in full compliance with all requirements of these rules.

(8) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

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(9) "Sale" or "sold" includes offering, exposing, packaging, manufacturing, advertising, assembling, preparing, or distributing for sale, and possession with intent to sell.

(10) "Misbranded consumer package" means a consumer package or package of consumer commodity which is not labeled as required under these rules, or which deviates from labeling requirements in a manner not permitted under these rules.

History: Cr. Register, May, 1973, No. 209, eff. 6-1-73; am. (6), Register, April, 1975, No. 232, eff. 5-1-75; correction in (8) made under s. 13.93 (2m) (b) 6, Stats., Register, April, 1993, No. 448.

**ATCP 90.03 Identity.** A declaration of identity on a consumer package shall appear on the principal display panel, and shall positively identify the commodity in the package by its common or usual name, or any other name or description which may be authorized or required by law. A declaration of identity on a consumer package shall appear generally parallel to the base on which the package rests as it is designed to be displayed.

Cr. Register, May, 1973, No. 209, eff. 6-1-73.

**ATCP 90.05 Declaration of responsibility; consumer packages.** (1) Any package kept, offered, or exposed for sale, or sold, at any place other than on the premises where packed shall specify conspicuously on the label of the package the name and address of the manufacturer, packer, or distributor. The name shall be the actual corporate name, or, when not incorporated, the name under which the business is conducted. The address shall include street address, city, state, and ZIP code; however, the street address may be omitted if this is shown in a current city directory or telephone directory. The requirement for inclusion of the ZIP code shall apply to all labels developed or revised after July 1, 1968.

(2) If a person manufactures, packs, or distributes a commodity at a place other than the principal place of business, the label may state the principal place of business in lieu of the actual place where the commodity was manufactured or packed or is to be distributed, unless such statement would be misleading. Where the commodity is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such commodity, such as "Manufactured for and packed by \_\_\_\_\_," "Distributed by \_\_\_\_\_," or any other wording of similar import that expresses the facts.

History: Cr. Register, May, 1973, No. 209, eff. 6-1-73; correction in (2) made under s. 13.93 (2m) (b) 5, Stats., Register, April, 1993, No. 448.

**ATCP 90.06 Declaration of quantity; consumer packages.** (1) **LARGEST WHOLE UNIT.** Where this regulation requires that the quantity declaration be in terms of the largest whole unit, the declaration shall, with respect to a particular package, be in terms of the largest whole unit of weight or measure, with any remainder expressed in:

(a) Common or decimal fractions of such largest whole unit, or

(b) In the next smaller whole unit, or units, with any further remainder in terms of common or decimal fractions of the smallest unit present in the quantity declaration.

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(2) **NET QUANTITY.** (a) A declaration of net quantity of the commodity in the package, exclusive of wrappers and any other material packed with such commodity, shall appear on the principal display panel of a consumer package and, except as otherwise specified under sub. (6), shall be in terms of the largest whole unit.

(b) The term "net weight" shall be used in conjunction with the declaration of quantity in terms of weight, and may either precede or follow the declaration of weight.

(c) A declaration of quantity may appear on one or more lines of print or type.

(3) **TERMS; WEIGHT, LIQUID MEASURE, OR COUNT.** (a) *General.* The declaration of the quantity of a particular commodity shall be expressed in terms of a method of sale permitted by s. 98.06, Stats.

(b) *Combination declaration.* 1. A declaration of quantity in terms of weight shall be combined with appropriate declarations of the measure, count, and size of the individual units unless a declaration of weight alone is fully informative.

2. A declaration of quantity in terms of measure shall be combined with appropriate declarations of the weight, count, and size of the individual units unless a declaration of measure alone is fully informative.

3. A declaration of quantity in terms of count shall be combined with appropriate declarations of the weight, measure, and size of the individual units unless a declaration of count alone is fully informative.

(4) **UNITS; WEIGHT, MEASURE.** (a) *Terms.* A declaration of quantity, in units of:

1. Weight, shall be in terms of the avoirdupois pound or ounce;

2. Liquid measure, shall be in terms of the United States gallon of 231 cubic inches or liquid-quart, liquid-pint, or fluid-ounce subdivisions of the gallon, and shall express the volume at 68°F (20°C), except for:

a. Petroleum products, for which the declaration shall express the volume at 60°F (15.6°C);

b. Commodities normally sold and consumed while frozen, for which the declaration shall express the volume at the frozen temperature; and

c. Commodities normally sold in the refrigerated state, for which the declaration shall express the volume of 40°F (4°C);

3. Linear measure, shall be in terms of the yard, foot, or inch;

4. Area measure, shall be in terms of the square yard, square foot, or square inch;

5. Dry measure, shall be in terms of the United States bushel of 2,150.42 cubic inches, or peck, dry-quart, and dry-pint subdivisions of the bushel;

6. Cubic measure, shall be in terms of the cubic yard, cubic foot, or cubic inch.

(b) *Metric terms.* The declaration of quantity may be in terms of the metric system of weight or measure for commodities packed for export shipment.

(c) *Abbreviations.* Any of the following abbreviations, and none other, may be employed in the quantity statement on a package of commodity:

1. avoirdupois	avdp	13. weight	wt
2. cubic	cu	14. yard	yd
3. feet or foot	ft	15. cubic centimeter	cc
4. fluid	fl	16. gram	g
5. gallon	gal	17. kilogram	kg
6. inch	in	18. microgram	mcg
7. liquid	liq	19. milligram	mg
8. ounce	oz	20. milliliter	ml
9. pint	pt	21. liter	l
10. pound	lb	22. millimeter	mm
11. quart	qt	23. square meter	m <sub>2</sub>
12. square	sq	24. meter	m

Note: Normally there are no periods following, nor plural forms of, these abbreviations. For example "oz" is the abbreviation for both "ounce" and "ounces" and it is not followed by a period.

(5) **UNITS WITH 2 OR MORE MEANINGS.** When the term "ounce" is employed in a declaration of liquid quantity, the declaration shall identify the particular meaning of the term by the use of the term "fluid"; however, such distinction may be omitted when, by association of terms, such as "1 pint 4 ounces," the meaning is obvious. Whenever the declaration of quantity is in terms of the dry pint or dry quart, the declaration shall include the word "dry."

(6) **PRESCRIBED UNITS.** (a) *Less than one foot, one square foot, one pound, or one pint.* The declaration of quantity for units of less than one foot, one square foot, one pound, or one pint, shall be expressed in the following terms:

1. Inches and fractions of inches if the length measure is less than one foot.
2. Square inches and fractions of square inches if the area measure is less than one square foot.
3. Ounces and fractions of ounces if the weight is less than one pound.
4. Ounces and fractions of ounces if the fluid measure is less than one pint.

(b) *Random packages; unit declaration.* The quantity declaration appearing on a random package may be expressed in terms of decimal fractions of the largest appropriate unit with the fraction being carried out to not more than 2 decimal places.

(c) *Four feet, four square feet, four pounds, one gallon, or more.* The declaration of quantity for units of 4 feet, 4 square feet, 4 pounds, one gallon, or more, shall be expressed as follows:

1. If the length measure is 4 feet or more, in terms of feet, followed in parentheses by a declaration of yards and common or decimal fractions of the yard, or in terms of feet followed in parentheses by a declaration of yards with any remainder in terms of feet and inches.
2. The largest whole unit if the area measure is 4 square feet or more, or the weight is 4 pounds or more, or the fluid measure is one gallon or more.

(d) *Weight; dual quantity declaration.* On packages containing one pound or more but less than 4 pounds, the declaration shall be expressed in ounces and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit. The quantity declaration appearing on a random package may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than 2 decimal places.

(e) *Fluid measure; dual quantity declaration.* On packages containing one pint or more but less than one gallon, the declaration shall be expressed in ounces and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.

(f) *Length measure; dual quantity declaration.* On packages containing one foot but less than 4 feet, the declaration shall be expressed in inches and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.

(g) *Area measure; dual quantity declaration.* On packages containing one square foot but less than 4 square feet, the declaration shall be expressed in square inches and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.

(h) *Bidimensional commodities.* The quantity declaration for bidimensional commodities, including roll-type commodities, shall be expressed as follows:

1. If less than one square foot, in terms of linear inches and fractions of linear inches.
2. If at least one square foot but less than 4 square feet, in terms of square inches followed in parentheses by a declaration of both, the length and width, each being in terms of the largest whole unit, except that:
  - a. No square inch declaration is required for a bidimensional commodity of 4 inches width or less;
  - b. A dimension of less than 2 feet may be stated in inches within the parenthetical; and
  - c. Commodities consisting of usable individual units (except rolltype commodities with individual usable units created by perforations, for which see par. (i)) shall require a declaration of unit area but not a declaration of total area of all such units.

3. If 4 square feet or more, in terms of square feet followed in parentheses by a declaration of the length and width in terms of the largest whole unit, except that:

- a. No declaration in square feet is required for a bidimensional commodity with a width of 4 inches or less;
- b. A dimension of less than 2 feet may be stated in inches within the parenthetical; and
- c. No declaration in square feet is required for commodities for which the length and width measurements are critical in terms of end use (such as tablecloths or bedsheets) if such commodities clearly present the length and width measurements on the label.

(i) *Count; ply.* 1. If the commodity is in individually usable units of one or more components or ply, the quantity declaration shall, in addition to complying with other applicable quantity declaration requirements of this regula-

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tion, include the number of ply and the total number of usable units. The total number of usable units need not be declared if the commodity consists of a single usable unit or less than 6 individual units which can easily be counted without opening the package, as provided under s. 98.07 (1), Stats.

2. Roll-type commodities, when perforated so as to identify individual usable units, shall not be deemed to be made up of individual usable units, but shall be labeled in terms of total area measurement, number of ply, count of usable units, and dimensions of a single usable unit.

(7) **FRACTIONS.** (a) A statement of net quantity of contents of any consumer commodity may contain common or decimal fractions. Common fractions shall be reduced to their lowest terms and decimal fractions shall not be carried out to more than 2 places.

(b) A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds, except that:

1. If there exists a firmly established general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity, they may be employed; and

2. If linear measurements are required in terms of yards or feet, common fractions may be in terms of thirds.

(8) **SUPPLEMENTARY QUANTITY DECLARATIONS.** (a) The required quantity declaration may be supplemented by one or more other declarations of weight or measure accurately reflecting quantity. Such supplemental declarations other than count, shall not appear on the principal display panel.

(b) *Metric system declarations.* A separate statement of the net quantity of contents in terms of the metric system is not regarded as a supplemental statement, but a statement of quantity in terms of the metric system of weight or measure may also appear on the principal display panel or on other panels.

History: Cr. Register, May, 1973, No. 209, eff. 6-1-73; am. (8) (a), Register, April, 1975, No. 232, eff. 5-1-75.

**ATCP 90.08 Prominence and placement; consumer packages.** (1) **GENERAL.** All information required to appear on a consumer package shall appear thereon in the English language and shall be prominent, definite, and plain, and shall be conspicuous as to size and style of letters and numbers and as to color of letters and numbers in contrast to color of background. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

(2) **LOCATION.** (a) Quantity declarations of the contents of a package shall appear in the bottom 30% of the principal display panel or panels.

(b) Labeling on the principal display panel may consist of a spot label glued or otherwise attached or affixed to the principal display panel of the package if it bears all mandatory labeling information required under these rules, or other state or federal laws and the rest of the panel is devoid of any mandatory labeling information. If a spot label is used, the declaration of quantity shall appear in the lower 30% of the label. If, however, any part of

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the mandatory labeling information appears elsewhere on the same panel, the entire panel shall be considered as the label and the quantity declaration shall appear in the lower 30% of the package panel.

(3) **STYLE OF TYPE OR LETTERING.** Quantity declarations shall be in such a style of type or lettering as to be boldly, clearly, and conspicuously presented with respect to other type, lettering, or graphic material on the package. A declaration of net quantity may be blown, formed, or molded on a glass or plastic surface when all other label information is blown, formed, or molded on the surface.

(4) **COLOR CONTRAST.** Quantity declarations shall be in a color that contrasts conspicuously with its background, except that a declaration of net quantity blown, formed, or molded on a glass or plastic surface need not be in a contrasting color if no other required label information is on the surface in a contrasting color.

(5) **FREE AREA.** The area surrounding the quantity declaration shall be free of printed information:

(a) Above and below the quantity declaration, by a space equal to at least the height of the required type size of the lettering in the declaration; and

(b) To the left and right of the quantity declaration, by a space equal to twice the width of the letter "N" of the style and required size of type used in the declaration.

(6) **PARALLEL QUANTITY DECLARATION.** The quantity declaration shall be generally parallel to the declaration of identity and to the base on which the package rests as it is designed to be displayed.

(7) **CALCULATION OF AREA OF PRINCIPAL DISPLAY PANEL FOR PURPOSES OF TYPE SIZE.** (a) The square-inch area of the principal display panel, for purposes of calculation of type size, shall be:

1. The product of the height times the width of that side of a rectangular container which can be considered to be the principal display panel.

2. Forty % of the product of the height times the circumference of a cylindrical or nearly cylindrical container.

3. Forty % of the total surface of a container of any other shape or form, unless the container presents an obvious principal display panel, such as the top of a triangular or circular package of cheese, or the top of a can of shoe polish, in which case the area shall consist of the entire square inch area of such surface.

(b) Determination of the principal display panel shall exclude tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles or jars.

(c) If more than one principal display panel is used for declaration of quantity, the square inch area of the largest principal or alternate display panel shall be used in determining the minimum height and width of numbers and letters to be used on any other display panel. The quantity declaration shall be of the same size on all panels used as the principal or alternate display panel.

(8) **MINIMUM HEIGHT AND WIDTH OF NUMBERS AND LETTERS.** (a) The height of any letter or number in the required quantity declaration shall be not less than that

shown in table 1 with respect to the square-inch area of the principal display panel, and the height of each number of a common fraction shall be equal to one-half of the minimum height requirements under table 1.

(b) No number or letter shall be more than 3 times as high as it is wide.

TABLE 1. Minimum Height of Numbers and Letters

Square-inch area of principal display panel	Minimum height of numbers and letters	Minimum height: label information blown, formed, or molded on surface of container
5 square inches and less . . . . .	1/16 inch	1/8 inch
Greater than 5 square inches and not greater than 25 square inches . . . . .	1/8 inch	3/16 inch
Greater than 25 square inches and not greater than 100 square inches	3/16 inch	1/4 inch
Greater than 100 square inches and not greater than 400 square inches	1/4 inch	5/16 inch
Greater than 400 square inches . . . . .	1/2 inch	9/16 inch

**(9) HEADER LABELS; USE AS PRINCIPAL DISPLAY PANEL.**

(a) A header label attached across the top of a transparent, opaque or mesh bag may be used as the principal display panel if the label bears all required labeling information under these rules and other applicable state and federal laws, the bag itself is devoid of other mandatory labeling information, and the quantity declaration appears in the lower 30% of the label. The minimum height and width of numbers and letters required for quantity declarations shall be determined by the area of the largest side of the empty bag with its header label when laid flat.

<sup>1</sup>History: Cr. Register, May, 1973, No. 209, eff. 6-1-73; Cr. (7) (c) and (9), Register, April, 1976, No. 232, eff. 5-1-75.

**ATCP 90.10 Specific consumer commodities, packages, containers; requirements. (1) DISPLAY CARD PACKAGE.** The type size of the quantity declaration for an individual package affixed to a display card, or for a commodity and display card together comprising a package, is governed by the dimensions of the display card.

**(2) EGGS.** When cartons containing 12 eggs are designed to permit division in half by the retail purchaser, the required quantity declaration shall be so positioned thereon that the context will be destroyed when the carton is divided.

**(3) AEROSOL AND SIMILAR PRESSURIZED CONTAINERS.** The declaration of quantity on an aerosol package, and on a similar pressurized package, shall be expressed in terms of the weight of the commodity, including propellant which will be expelled when instructions for use as shown on the container are followed.

**(4) MULTI-UNIT PACKAGES.** Any package containing more than one individual commodity of the same commodity in package form shall bear on the outside of the package a declaration of:

- (a) The number of individual units;
- (b) The quantity of each individual unit; and
- (c) The total quantity of the contents of the multi-unit package, except for the parenthetical quantity statement required for a dual quantity declaration. This shall be applicable only to labels adopted, revised or reordered after the effective date of this chapter.

**(5) COMBINATION PACKAGES.** Any package containing individual units of dissimilar commodities, such as a sewing, upholstery, or antiquing kit, shall bear on the label of the package a separate quantity declaration for each unit, except as otherwise provided under s. 98.07 (1), Stats.

Note: Under s. 98.07 (1), Stats., a set or combination of commodities customarily sold as and understood by consumers as a single unit is exempt from declaration of count, if displayed with a selling price. Packages of commodities containing less than 6 units and displayed with a selling price are also exempt from declaration of count if the units can easily be counted without opening the package.

**(6) VARIETY PACKAGES.** Any package containing individual units of reasonably similar commodities, such as seasonal gift packages of cheese or variety packages of cereal, shall bear on the label of the package a declaration of the total quantity of commodity in the package except as otherwise provided under s. 98.07 (1), Stats. (See note at end of sub. (5).)

**(7) CYLINDRICAL CONTAINERS.** Information required to appear on the principal display panel of cylindrical or nearly cylindrical containers shall appear within that 40% of the circumference which is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

**(8) MEASUREMENT OF CONTAINER-TYPE COMMODITIES, HOW EXPRESSED.** (a) *General.* Commodities designed and sold for use as containers for other materials or objects, such as bags, cups, boxes, and pans, shall be labeled with a declaration of net quantity as follows:

1. For bag-type commodities, in terms of count followed by linear dimensions of the bag (whether packaged in a perforated roll or otherwise). When the unit bag is characterized by 2 dimensions because of the absence of a gusset, the width and length shall be expressed in inches, except that a dimension of 2 feet or more shall be expressed in feet with any remainder in terms of inches or common or decimal fractions of the foot. (Example: "25 bags, 17 in x 20 in" or "100 bags, 20 in x 2 ft 6 in" or "50 bags, 20 in x 2½ ft.") When the unit bag is gusseted, the dimensions shall be expressed as width, depth, and length, in terms of inches, except that any dimension of 2 feet or more shall be expressed in feet with any remainder in terms of inches or the common or decimal fractions of the foot. (Examples: "25 bags, 17 in x 4 in x 20 in" or "100 bags, 20 in x 12 in x 2½ ft.")

2. For other square, oblong, rectangular, or similarly shaped containers, in terms of count followed by length, width, and depth, except depth need not be listed when less than 2 inches. (Example: "2 cake pans, 8 in x 8 in" or "roasting pan, 12 in x 8 in x 3 in.")

3. For circular or other generally round-shaped containers, other than containers described under par. (b) 4, in terms of count followed by diameter and depth, except

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depth need not be listed when less than 2 inches. (Example: "4 pie pans, 8 in diameter x 4 in.")

(b) *Capacity.* If a container is represented by label references as being capable of holding a specific quantity of any substance or class of substances, such representations shall be made a part of the net quantity statement as provided under par. (a), and shall specify capacity as follows:

1. Liquid measure capacity for containers to be used for liquids, semisolids, viscous materials, or mixtures of solids and liquids shall be expressed in terms of the largest whole unit (gallon, quart, pint, ounce) with any remainder in terms of the common or decimal fraction of that unit. (Example: Freezer Boxes — "4 boxes, 1-qt capacity, 5 in x 4 in x 3 in.")

2. Dry measure capacity for containers to be used for solids shall be expressed in terms of the largest whole unit (bushel, peck), with any remainder in terms of the common or decimal fraction of that unit. (Example: Leaf Bags — "8 bags, 6-bushel capacity, 3 ft x 5 ft.")

3. The capacity of containers used as liners for other more permanent containers shall be expressed in the same terms as those normally used to express the capacity of the more permanent container. (Example: Garbage Can Liners — "10 liners, 2 ft 6 in x 3 ft 9 in, fits up to 30-gallon cans.")

4. The net quantity statement for containers such as cups shall, as an exception to subdivisions 1 to 3, be listed in terms of count and liquid capacity per unit. (Example: "24 cups, 6 fl oz capacity.") The use of the terms "capacity," "diameter," and "fluid" is optional.

(9) **TEXTILE PRODUCTS, THREADS, AND YARNS.** (a) *Wearing apparel.* Wearing apparel (including non-textile apparel and accessories such as leather goods and footwear) sold as single-unit items, or as single unit pairs, if normally sold in pairs (such as hosiery, gloves, and shoes), shall be exempt from the requirements for a net quantity statement by count, as required by s. ATCP 90.06 (3).

(b) *Textiles.* Bedsheets, blankets, pillowcases, comforters, quilts, bedspreads, mattress covers and pads, afghans, throws, dresser and other furniture scarfs, tablecloths and napkins, flags, curtains, drapes, dish towels, dish cloths, towels, face cloths, utility cloths, bath mats, carpets and rugs, pot holders, fixture and appliance covers, non-rectangular diapers, slip covers, and other similar items, shall be exempt from the requirements of s. ATCP 90.06 (6) (h), except that the quantity statement for:

1. Fitted sheets and mattress covers shall state, in inches, the length and width of the mattress for which the item is designed, such as "twin," "double," or "king." (Example: "Twin Fitted Sheet for 39 x 75 in mattress.")

2. Flat sheets shall state the size designation of the mattress for which the sheet is designed, such as "twin," "double," or "king." The quantity statement also shall state, in inches, the length and width of the mattress for which the sheet is designed, followed in parentheses by a statement, in inches, of the length and width of the sheet before hemming. (Example: "Double flat sheet for 54 x 75 in mattress (81 x 104 in before hemming).")

3. Pillowcases shall state the size designation of the pillow for which the pillowcase is designed, such as "youth," "standard," or "queen." The quantity statement also shall state, in inches, the length and width of the pillow for which the pillowcase is designed, followed in parentheses by a statement, in inches, of the length and width of the pillowcase before hemming. (Example: "Standard Pillowcase for 20 x 26 in pillow (42 x 36 before hemming).")

4. Blankets, comforters, quilts, bedspreads, mattress pads, afghans, and throws shall state, in inches, the length and width of the finished item. The quantity statement also may state the length of any ornamentation and the size designation of the mattress for which the item is designed, such as "twin," "double," or "king."

5. Tablecloths and napkins shall state, in inches, the length and width of the finished item after hemming. The quantity statement also may state parenthetically, in inches, the length and width of the item before hemming if identified as the measurement before hemming.

6. Curtains, drapes, flags, furniture scarfs, and similar items, shall state, in inches, the length and width of the finished item. The quantity statement also may state parenthetically, in inches, the length of any ornamentation.

7. Carpets and rugs shall state, in feet, with any remainder in common or decimal fractions of the foot or in inches, the length and width of the finished item. The quantity statement also may state parenthetically, in inches, the length of any ornamentation.

8. Woven dish towels, dish cloths, towels, face cloths, utility cloths, bath mats, and similar items, shall state, in inches, the length and width of the finished item. The quantity statement for such items, when knitted, need not state the dimensions.

9. Textile products such as pot holders, fixture and appliance covers, non-rectangular diapers, slip covers, and similar items, shall be stated in terms of count and may include size designations and dimensions.

10. Other than rectangular textile products identified in subdivisions 1 to 8 shall state the geometric shape of the product and the dimensions which are customarily used in describing such geometric shape. (Example: "Oval tablecloth 54 x 42 in," representing the maximum length and width in this case.)

11. Packages of remnants of textile products of assorted sizes, when sold by count, shall be accompanied by the term "irregular dimensions" and the minimum size of such remnants.

(c) *Textiles: variations from declared dimensions.* The maximum variation from declared dimensions for textiles shall not exceed:

1. A minus variation greater than 3% of a declared dimension and a plus variation greater than 6% of a declared dimension for an item with no declared dimension less than 24 inches.

2. A minus variation greater than 6% of a declared dimension and a plus variation greater than 12% of a de-

clared dimension for an item with a declared dimension less than 24 inches.

(d) *Variety textile packages; exemption.* Variety packages of textiles which are required under s. ATCP 90.06 (3) (b) to provide a combination declaration stating the quantity of each individual unit, shall be exempt from the following requirements:

- (1) Location, under s. ATCP 90.08 (2);
- (2) Free area, under s. ATCP 90.08 (5); and
- (3) Minimum height and width of numbers and letters, under s. ATCP 90.08 (8).

(e) *Sewing threads, handicraft threads, and yarns; exemptions.* As an exception to quantity declaration requirements of s. ATCP 90.06 (6) (c):

1. The net quantity statement for sewing and handicraft threads shall be expressed in terms of yards. Each unit of industrial type thread shall be marked to show its net measure in term of yards or its net weight in terms of avoirdupois pounds or ounces, except that ready-wound bobbins which are not sold separately need not be individually marked, but the package containing such bobbins shall be marked to show the number of bobbins contained therein and the net yards of thread on each bobbin.

2. The net quantity statement for yarns shall be expressed in terms of weight.

3. Thread products may, in lieu of name and address, bear a trademark, symbol, brand, or other mark that positively identifies the manufacturer, packer, or distributor, provided that such marks, employed to identify the vendor, shall be filed with the department.

(10) **PACKAGED SEED.** Packages of seeds sold for seeding purposes shall be labeled in full accord with these rules, except that:

(a) The quantity statement for packages of less than 8 ounces shall appear in the upper 30% of the principal display panel and be expressed in terms of the largest whole unit of the metric system for all weights up to one-fourth ounce, and in the avoirdupois system for all other weights up to 8 ounces.

(b) The quantity statement for seed tapes, pre-planters, or similar items shall be in terms of count.

(c) This subsection shall apply only to labels adopted, revised, or reordered after the effective date of these rules.

Cr. Register, May, 1973, No. 209, eff. 6-1-73.

**ATCP 90.11 Exemptions.** (1) **GENERAL.** Whenever any consumer commodity or package of consumer commodity is exempted from the requirements for dual quantity declaration, the net quantity declaration required to appear on the package shall be in terms of the largest whole unit, except for multi-unit packages as provided under s. ATCP 90.10 (4) (c).

(2) **RANDOM PACKAGES.** Random packages bearing a label declaring the net weight, the price per pound, and the total price are exempt from the type size, dual declaration, placement, and free area requirements of these rules. If a random package is packed at one place for subsequent sale

at another, neither the price per unit of weight nor the total selling price need appear on the package, provided the package label includes both such prices at the time it is offered or exposed for sale at retail. This exemption shall also apply to uniform weight packages of cheese and cheese products labeled in the same manner and by the same type of equipment as random packages exempted by this section.

(3) **SMALL CONFECTIONS.** Individually wrapped pieces of "penny candy" and other confectionery of less than ½ ounce net weight per individual piece are exempt from the labeling requirements of these rules when the package or container in or from which such confectionery is sold is in conformance with the labeling requirements of these rules.

(4) **INDIVIDUAL SERVINGS.** Individual-serving-size packages of foods containing less than ½ ounce or less than ½ fluid ounce for use in restaurants, institutions, and passenger carriers, and not otherwise packaged for sale at retail, are exempt from the required declaration of net quantity of contents specified in these rules.

(5) **CUTS, PLUGS, AND TWISTS OF TOBACCO AND CIGARS.** Individual cuts, plugs, and twists of tobacco and individual cigars are exempt from labeling requirements of these rules if the packages or containers in or from which they are sold conform to the labeling requirements of these rules.

(6) **REUSABLE (RETURNABLE) GLASS CONTAINERS.** Nothing herein shall preclude the continued use of reusable (returnable) glass containers, but all such containers ordered after the effective date of these rules shall fully conform to all the requirements of these rules.

(7) **CIGARETTES AND SMALL CIGARS.** Cartons of cigarettes and small cigars, containing 10 individual packages of 20 cigarettes or small cigars, labeled in accordance with the requirements of these rules are exempt from location requirements under s. ATCP 90.08 (2), minimum height and width of numbers and letters requirements under s. ATCP 90.08 (8), and quantity declaration requirements applicable to multi-unit packages under s. ATCP 90.10 (4), provided such cartons bear a declaration of the net quantity of commodity in each package of the carton.

(8) **PACKAGED COMMODITIES WITH LABELING REQUIREMENTS SPECIFIED UNDER STATE OR IN FEDERAL LAW.** Packages of meat and meat products, poultry and poultry products, tobacco and tobacco products, pesticides, and seeds are exempt from dual quantity declaration requirements, under s. ATCP 90.06 (6) (d) through (f) and location and minimum height and width of numbers and letters requirements under s. ATCP 90.08 (2) and (8), to the extent that quantity labeling requirements for such products are specified under state or federal law and provide reasonably adequate consumer information.

(9) **FLUID DAIRY PRODUCTS, ICE CREAM, AND SIMILAR FROZEN DESSERTS.** (a) Fluid dairy products, ice cream, and similar frozen desserts:

1. When packaged in ½-pint and ½-gallon containers, are exempt from any provision of these rules requiring a statement of net contents in terms of 8 fluid ounces and 64 fluid ounces. Net contents may be expressed as ½ pint and ½ gallon, respectively.

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2. When packaged in 1-pint, 1-quart, and ½-gallon containers, are exempt from the dual quantity declaration requirements under s. ATCP 90.06 (6) (e).

3. When measured by and packaged in ½-pint, 1-pint, 1-quart, ½-gallon and 1-gallon "measure containers" are exempt from location requirements under s. ATCP 90.08 (2).

(b) Milk and milk products when measured by and packaged in glass or plastic containers of ½-pint, 1-pint, 1-quart, ½-gallon, and 1-gallon capacities, are exempt from location requirements under s. ATCP 90.08 (2), provided that other required label information is conspicuously displayed on the cap or outside closure, and the required net quantity of contents declaration is conspicuously blown, formed, or molded on, or permanently applied to that part of the glass or plastic container at or above the shoulder of the container.

**(10) SINGLE STRENGTH AND LESS THAN SINGLE STRENGTH FRUIT JUICE BEVERAGES, IMITATIONS OR SUBSTITUTES THEREOF, AND DRINKING WATER.** (a) Single strength and less than single strength fruit juice beverages, imitations or substitutes thereof, and drinking water:

1. When packaged in glass, plastic, or fluid milk type paper containers of ½-pint or ½-gallon capacity, are exempt from any provisions of these rules requiring a statement of net contents in terms of 8 fluid ounces and 64 fluid ounces. Net contents may be expressed as ½ pint, or half pint, and ½ gallon, or half gallon, respectively.

2. When packaged in glass, plastic, or fluid milk type paper containers of 1-pint, 1-quart, and ½-gallon capacities, are exempt from dual quantity declaration requirements under s. ATCP 90.06 (6) (e).

3. When packaged in glass or plastic containers of ½-pint, 1-pint, 1-quart, ½-gallon, and 1-gallon capacities, are exempt from location requirements under s. ATCP 90.08 (2), provided other required label information is conspicuously displayed on the cap or outside closure and the required net quantity of contents declaration is conspicuously blown, formed, or molded into or permanently applied to that part of the glass or plastic container at or above the shoulder of the container.

**(11) SODA WATER BOTTLES.** Bottles of soda water beverages, as defined under s. 97.34 (8), Stats., are exempt from location requirements for the declaration of:

(a) Identity, under s. ATCP 90.03, when such declaration appears on the bottle closure; and

(b) Quantity, under s. ATCP 90.08 (2), when such declaration is blown, formed, or molded on or above the shoulder of the container and all other information required by these rules appears only on the bottle closure.

**(12) MULTI-UNIT SODA WATER PACKAGES.** Multi-unit packages of soda water beverages are exempt from requirements for the declaration of responsibility under s. ATCP 90.05, and identity, under s. ATCP 90.03, when such declaration appears on the individual units and is not obscured by the multi-unit packaging.

**(13) BUTTER.** Butter, when packaged in 4-ounce, 8-ounce, and 1-pound units with continuous label copy wrapping, is exempt from requirements that the state-

ment of identity under s. ATCP 90.03, and the net quantity declaration under s. ATCP 90.08 (6) be generally parallel to the base of the package. Butter, when packaged in 8-ounce and 1-pound units, is exempt from the requirement for location under s. ATCP 90.08 (2) of the net quantity declaration and, when packaged in 1-pound units, is exempt from the requirement for dual quantity declaration under s. ATCP 90.06 (6) (d).

**(14) EGGS.** Egg cartons containing 12 eggs are exempt from the requirement for location of net quantity declaration under s. ATCP 90.08 (2). When egg cartons are designed to permit division in half by the retail purchaser, each half is exempt from the labeling requirements of these rules if the individual whole carton conforms to all such requirements.

**(15) FLOUR.** (a) Wheat flour, packaged in units of 2, 5, 10, 25, 50, and 100 pounds is exempt from location requirements for net quantity declaration under s. ATCP 90.08 (2), and when packaged in units of 2 pounds is exempt from dual quantity declaration requirements under s. ATCP 90.06 (6) (d).

(b) Corn flour, packaged in 5, 10, 25, 50, and 100-pound bags is exempt from location requirements for net quantity declaration under s. ATCP 90.08 (2).

**(16) SMALL PACKAGES.** On a principal display panel of 5 square inches or less, the declaration of quantity need not appear in the bottom 30% of the principal display panel if the quantity declaration otherwise meets the requirements of these rules.

**(17) DECORATIVE COSMETIC CONTAINERS.** The principal display panel of a cosmetic marketed in a "boudoir-type" container including decorative cosmetic containers of the "cartridge," "pill box," "compact," or "pencil" variety, and those with a capacity of one-fourth ounce or less, may consist of a tear-away tag or tape affixed to the container providing the tag or tape bears all required label information.

**(18) COMBINATION PACKAGES.** Combination packages, as described under s. ATCP 90.10 (5), are exempt from the following labeling requirements:

(a) Location of quantity declaration under s. ATCP 90.08 (2);

(b) Free area surrounding the quantity declaration as prescribed under s. ATCP 90.08 (5); and

(c) Minimum height and width of numbers and letters under s. ATCP 90.08 (8).

**(19) MARGARINE OR BUTTER SUBSTITUTES.** Margarine or other butter substitutes in 1-pound rectangular packages, except for packages containing such products in whipped or soft form, or packages containing more than 4 sticks, are exempt from location requirements of the net quantity declaration under s. ATCP 90.08 (2), and dual quantity declaration requirements under s. ATCP 90.06 (6) (d).

**(20) PRESCRIPTION AND INSULIN-CONTAINING DRUGS.** Prescription and insulin-containing drugs subject to the provisions of section 503 (b) (1) or 506 of the federal food, drugs, and cosmetic act (21 USC 301 et seq.) are exempt from these rules.



**(21) CAMERA FILM.** Camera film packaged and labeled for retail sale is exempt from those provisions of s. ATCP 90.06 which specify how measurement of commodities should be expressed, provided:

(a) The net quantity of contents on packages of movie film and bulk still film is expressed in terms of the number of linear feet of usable film contained therein, and

(b) The net quantity of contents on packages of still film is expressed in terms of the number of exposures the contents will provide. Length and width measurements of individual exposures, expressed in millimeters or inches, are authorized as an optional statement. (Examples: "36 exposures, 36 x 24 mm" or "12 exposures, 2 1/4 x 2 1/4 in.")

**(22) PAINTS AND KINDRED PRODUCTS.** (a) Paints, varnishes, lacquers, thinners, removers, oils, resins, and solvents, packaged in 1-liquid-pint and 1-liquid-quart units are exempt from dual quantity declaration requirements under s. ATCP 90.06 (6) (e).

(b) Tint base paint may be labeled in terms of a quart or gallon, provided:

1. The net contents consist of a quart or gallon after the addition of colorant;

2. A statement is included with the net quantity declaration indicating that the tint base paint is not to be sold without the addition of colorant; and

3. The actual net contents of the tint base container, before addition of colorant, is stated on the label in terms of fluid ounces.

**(23) AUTOMOTIVE COOLING SYSTEM ANTIFREEZE.** Antifreeze packed in 1-liquid-quart units, in metal or plastic containers, is exempt from dual quantity declaration requirements under s. ATCP 90.06 (6) (e).

**(24) MOTOR OILS.** Motor oils packed in 1-liquid-quart units are exempt from dual quantity declaration requirements under s. ATCP 90.06 (6) (e). Additionally, motor oil packed in 1-liquid-quart, 1-gallon, 1 1/4-gallon, 2-gallon and 2 1/2-gallon units, with the principal display panel appearing on the body of the container, is exempt from that part of the identity declaration requirement of s. ATCP 90.03 which would require the SAE grade to appear on the principal display panel, provided the SAE grade appears on the can lid and is expressed in letters and numerals in type size of at least 1/4 inch.

**(25) LIQUORS AND FERMENTED MALT BEVERAGES.** Packages of intoxicating liquors and fermented malt beverages are exempt from these rules.

**(26) EXEMPTIONS UNDER STATE FOOD LAWS.** (a) *Fresh fruits and vegetables.* Packages of fresh fruits and vegetables, the contents of which are customarily sold by count and are plainly visible to the purchaser, are exempt from labeling requirements of s. 97.03, Stats., and these rules.

Note: See s. 97.03 (2) (a), Stats.

(b) *Bulk food.* Bulk foods packaged by a retailer are exempt from labeling requirements of s. 97.03, Stats., and these rules, if displayed with a counter card, sign, or other appropriate device bearing all required label information.

Note: See s. 97.03 (2) (b), Stats.

(c) *Sausage.* Sausage enclosed in a casing is exempt from labeling requirements of s. 97.03, Stats., and these rules, if displayed with a counter card, sign or other device bearing all required label information. Weight need not be declared on the card, sign or device if the sausage is to be weighed at time of sale, but if the sausage is placed in another package, labeling requirements under s. 97.03, Stats., and these rules shall apply.

Note: See s. 97.03 (2) (c), Stats.

(d) *Bakery products.* Bakery products in transparent containers are exempt from labeling requirements of s. 97.03, Stats., and these rules, if displayed with a counter card, sign or other device bearing the required label information. This exemption is limited to products produced by a baker and sold by the baker at his or her own retail outlets.

Note: See s. 97.03 (2) (d), Stats.

(e) *Foods for processing.* Foods which are to be processed, labeled, or repacked in substantial quantities by the buyer prior to further sale are exempt from labeling requirements under ch. 97, Stats., and these rules, pending completion of such processing, labeling or repacking by the buyer.

Note: See s. 97.03 (2) (e), Stats., and s. ATCP 90.01 (2).

History: Cr. Register, May, 1973, No. 209, eff. 6-1-73; am. Register, August, 1973, No. 212, eff. 9-1-73, am. (7), (8), (18) (intro. par.) and (24), Register, April, 1975, No. 232, eff. 5-1-75; correction in (26) (d) made under s. 13.93 (2m) (b) 5, Stats., Register, April, 1993, No. 448.

**ATCP 90.12 Variations to be allowed. (1) VARIATIONS FROM DECLARED NET QUANTITY.** Except as otherwise provided by statutes or rules thereunder, variations from the declared net weight, measure, or count are permitted only when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages that occur in good packaging practice, but such variations shall not be permitted to such extent that the average of the quantities in the packages of a particular commodity, or a lot of the commodity that is kept, offered, or exposed for sale, or sold, is below the quantity stated. No unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment, delivery, or lot compensate for such shortage. Variations above the declared quantity shall not be unreasonably large.

**(2) VARIATIONS RESULTING FROM EXPOSURE.** Except as otherwise provided by statutes or rules thereunder, variations from the declared weight or measure shall be permitted when caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result in change of weight or measure, but only after the commodity is introduced into intrastate commerce. A commodity is "introduced into intrastate commerce" at the time of the first sale and delivery of the commodity within the state, the delivery being either directly to the purchaser or agent, or to a common carrier for shipment to the purchaser or agent. No exposure variations shall be recognized for commodities while in the possession or under the control of the packager or the person who introduces the package into intrastate commerce.

**(3) MAGNITUDE OF PERMITTED VARIATIONS.** The magnitude of variations permitted under this section shall, in

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the case of any shipment, delivery, or lot, be determined by the facts in each case.

History: Cr. Register, May, 1973, No. 209, eff. 6-1-73; corrections in (2) made under s. 13.93 (2m) (b) 5, Stats., Register, April, 1993, No. 448.

**ATCP 90.13 Enforcement.** The sale of misbranded consumer packages is prohibited. Violations may be prosecuted or enjoined as provided under s. 98.26, Stats.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.