

202 CMR: DIVISION OF STANDARDS

202 CMR 3.00: MODEL STATE PACKAGING AND LABELING

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3.01: Foreword

The Model State Packaging and Labeling Regulation was first adopted during the 37th National Conference on Weights and Measures in 1952. Reporting to the Conference, the Committee on Legislation stated:

The National Conference should adopt a model package regulation for the guidance of those States authorized to adopt such a regulation under provisions of their weights and measures laws. Since so much of the work of weights and measures officials in the package field concerns food products, the importance of uniformity between the Federal Food and Drug Administration's regulations and any model regulations to be adopted by this Conference cannot be overemphasized.

Since its inception, the Model Packaging Regulation has been continually revised to meet the complexities of an enormous expansion in the packaging industry--an expansion which, in late 1966, brought about the passage of the Fair Packaging and Labeling Act. Recognizing the need for compatibility with the Federal Act, the Committee on Laws and Regulations of the 53rd National Conference in 1968 amended the Model Packaging and Labeling Regulation to parallel regulations adopted by Federal agencies under FPLA. The process of amending and revising this Regulation is a continuing one, in order to keep it current with practices in the packaging field and make it compatible with appropriate Federal Regulations.

3.02: Application

202 CMR 3.00 shall apply to packages and to commodities in package form, but shall not apply to:

- (1) inner wrappings not intended to be individually sold to the customer,
- (2) shipping containers or wrapping used solely for the transportation of any 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 or Non-consumer commodities, as defined herein,
- (3) auxiliary containers or outer wrappings used to deliver packages of such commodities to retail customers if such containers or wrappings bear no printed matter pertaining to any particular commodity,
- (4) containers used for retail tray pack displays when the container itself is not intended to be sold (e.g., the tray that is used to display individual envelopes of seasonings, gravies, etc. and the tray itself is not intended to be sold),

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3.02: continued

(5) commodities put up in variable weights and sizes for sale intact and intended to be either weighed or measured at the time of sale, where no package quantities are represented, and where the method of sale is clearly indicated in close proximity to the quantity being sold, or

(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 by 202 CMR 3.00.

3.03: Definitions

Commodity in Package Form. The term "commodity in package form" shall be construed to mean a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. 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" is used in 202 CMR 3.00, it shall be construed to mean "commodity in package form" as herein defined.

Consumer Package: Package of Consumer Commodity. A "consumer package" or "package of consumer commodity" shall be construed to mean 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.

Label. The term "label" shall be construed to mean any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, 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 by 202 CMR 3.00.

Multi-Unit Package. The term "multi-unit package" shall be construed to mean a package containing two or more individual packages of the same commodity, in the same quantity, with the individual packages intended to be sold as part of the multi-unit package but capable of being individually sold in full compliance with all requirements of 202 CMR 3.00.

Non-consumer Package: Package of Non-consumer Commodity. A "Non-consumer package" or "package of Non-consumer commodity" shall be construed to mean any commodity in package form other than a consumer package, and particularly a package intended solely for industrial or institutional use or for wholesale distribution.

Person. The term "person" shall be construed to mean both singular and plural, and shall include any individual, partnership, company, corporation, association, and society.

Principal Display Panel or Panels. The term "principal display panel or panels" shall be construed to mean that part, or those parts, of a label that is, or are, so designed as to most likely 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."

Random Package. The term "random package" shall be construed to mean a package that is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights; that is, packages of the same consumer commodity with no fixed pattern of weight.

3.04: Identity

(1) Declaration of Identity: Consumer Package. 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, description, generic term, or the like.

(2) Parallel Identity Declaration: Consumer Package. 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.

3.05: Declaration of Identity: Non-consumer Package

A declaration of identity on a Non-consumer package shall appear on the outside of a package and shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like.

3.06: Declaration of Responsibility: Consumer and Non-consumer Packages

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 only to labels that have been developed or revised after July 1, 1968.

If a person manufactures, packs, or distributes a commodity at a place other than his 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 "Manufacture for and packed by _____," "Distributed by _____," or any other wording of similar import that expresses the facts.

3.07: Declaration of Quantity: Consumer Packages

(1) Largest Whole Unit. Where 202 CMR 3.00 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 in
- (b) 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.

(2) Net Quantity. 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, unless otherwise specified in 202 CMR 3.00 (see 202 CMR 3.07(8)), shall be in terms of the largest whole unit.

- (a) Use of "Net Weight." The term "net weight" shall be used in conjunction with the declaration of quantity in terms of weight; the term may either precede or follow the declaration of weight.
- (b) Lines of Print or Type. A declaration of quantity may appear on one or more lines of print or type.

3.07: continued

(3) Terms: Weight, Liquid Measure, or Count. The declaration of the quantity of a particular commodity shall be expressed in terms of liquid measure if the commodity is liquid, or in terms of weight if the commodity is solid, semisolid, viscous, or a mixture of solid and liquid, or in terms of numerical count. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particular commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity.

(4) Combination Declaration.

(a) 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.

(b) 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.

(c) 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.

(5) Units: Weight, Measure. A declaration of quantity

(a) in units of weight shall be in terms of the avoirdupois pound or ounce;

(b) in units of 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 in the case of petroleum products, for which the declaration shall express the volume at 60°F (15.6°C), and except also in the case of a commodity that is normally sold and consumed while frozen, for which the declaration shall express the volume at the frozen temperature, and except also in the case of a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at 40°F (4°C);

(c) in units of linear measure shall be in terms of the yard, foot, or inch;

(d) in units of area measure, shall be in terms of the square yard, square foot, or square inch;

(e) in units of 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;

(f) in units of cubic measure shall be in terms of the cubic yard, cubic foot, or cubic inch:

Provided, that in the case of a commodity packed for export shipment, the declaration of quantity may be in terms of the metric system of weight or measure.

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

avoirdupois	avdp	quart	qt
cubic	cu	square	sq
feet or foot	ft	weight	wt
fluid	fl	yard	yd
gallon	gal	cubic centimeter	cc
inch	in	gram	g
liquid	liq	kilogram	kg
ounce	oz	microgram	mcg
pint	pt	milligram	mg
pound	lb	milliliter	ml

(There normally are no periods following, nor plural forms of, these abbreviations. For example, "oz" is the abbreviation for both "ounce" and "ounces.")

3.07: continued

(7) Units with Two 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 (for example, as in "1 pint 4 ounces"), the proper 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."

(8) Prescribed Units.

(a) Less than One Foot, One Square Foot, One Pound, or One Pint. The declaration of quantity shall be expressed in terms of

1. in the case of length measure of less than one foot, inches and fractions of inches;
2. in the case of area measure of less than one square foot, square inches and fractions of square inches;
3. in the case of weight of less than one pound, ounces and fractions of ounces;
4. in the case of fluid measure of less than one pint, ounces and fractions of ounces;

Provided, that the quantity declaration appearing on a random package may be expressed in terms of decimal fractions of the largest appropriate unit, the fraction being carried out to not more than two decimal places.

(b) Four Feet, Four Square Feet, Four Pounds, One Gallon or More. In the case of

1. length measure of four feet or more the declaration of quantity shall be expressed 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.

In the case of

2. area measure of four square feet or more;
3. weight of four pounds or more;
4. fluid measure of one gallon or more

the declaration of quantity shall be expressed in terms of the largest whole unit.

(c) Weight: Dual Quantity Declaration. On packages containing one pound or more but less than four pounds, the declaration shall be expressed in ounces and, in addition, shall be followed by declaration of parentheses, expressed in terms of the largest whole unit:

Provided, that 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 two decimal places.

(d) 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.

(e) Length Measure: Dual Quantity Declaration. On packages containing one foot but less than four 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.

(f) Area Measure: Dual Quantity Declaration. On packages containing one square foot but less than four 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.

(g) Bidimensional Commodities. For bidimensional commodities (including roll-type commodities) the quantity declaration shall be expressed,

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 four 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:

Provided, that no square inch declaration is required for a bidimensional commodity of four inches width or less; a dimension of less than two feet may be stated in inches within the parenthetical; and commodities consisting of usable individual units (except roll-type commodities with individual usable units created by perforations, for which see 202 CMR 3.07(5)(h). Count: Ply) require a declaration of unit area but not a declaration of total area of all such units;

3.07: continued

3. if four 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:

Provided, that no declaration in square feet is required for a bidimensional commodity with a width of four inches or less; a dimension of less than two feet may be stated in inches within the parenthetical; and 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 bed sheets) if such commodities clearly present the length and width measurements on the label.

(h) Count: Ply. 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 regulation, include the number of ply and the total number of usable units.

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

(9) Fractions. A statement of net quantity of contents of any consumer commodity may contain common or decimal fractions. A common fraction shall be in terms of $\frac{1}{2}$'s, $\frac{1}{4}$'s, $\frac{1}{8}$'s, $\frac{1}{16}$'s, or $\frac{1}{32}$'s. except that

(a) 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

(b) if linear measurements are required in terms of yards or feet, common fractions may be in terms of $\frac{1}{3}$'s.

A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than two places.

(10) Supplementary Declarations.

(a) Supplementary Quantity Declarations. The required quantity declaration may be supplemented by one or more declarations of weight, measure, or count, such declaration appearing other than on a principal display panel. Such supplemental statement of quantity of contents shall not include any terms qualifying a unit of weight, measure, or count, that tends to exaggerate the amount of commodity contained in the package (e.g., "giant" quart, "full" gallon, "when packed," "minimum," or words of similar import).

(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, and 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.

(11) Qualification of Declaration Prohibited. In no case shall any declaration of quantity be qualified by the addition of the words "when packed," "minimum," or "not less than," or any words of similar import, nor shall any unit of weight, measure, or count be qualified by any term (such as "jumbo," "giant," "full," or the like) that tends to exaggerate the amount of commodity.

3.08: Declaration of Quantity: Non-consumer Packages

(1) Location. A Non-consumer package shall bear on the outside a declaration of the net quantity of contents. Such declaration shall be in terms of the largest whole unit (see 202 CMR 3.07(1) Largest Whole Unit).

(2) Terms: Weight, Liquid Measure, or Count. The declaration of the quantity of a particular commodity shall be expressed in terms of liquid measure if the commodity is liquid, or in terms of weight if the commodity is solid, semisolid, viscous, or a mixture of solid and liquid, or in terms of numerical count. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particular commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity.

3.08: continued

- (3) Units: Weight, Measure. A declaration of quantity
- (a) in units of weight shall be in terms of the avoirdupois pound or ounce;
 - (b) in units of 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 in the case of petroleum products, for which the declaration shall express the volume at 60°F (15.6°C), and except also in the case of a commodity that is normally sold and consumed while frozen, for which the declaration shall express the volume at the frozen temperature, and except also in the case of a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at 40°F (4°C);
 - (c) in units of linear measure shall be in terms of the yard, foot, or inch;
 - (d) in units of area measure, shall be in terms of the square yard, square foot, or square inch;
 - (e) in units of 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;
 - (f) in units of cubic measure shall be in terms of the cubic yard, cubic foot, or cubic inch:
Provided, that nothing in 202 CMR 3.08(3) shall prohibit the labeling of Non-consumer packages in terms of units of the metric system.
- (4) Abbreviations. Any generally accepted abbreviation of a unit name may be employed in the quantity statement on a package of commodity. (For commonly accepted abbreviations, see 202 CMR 3.07(6) Abbreviations.)
- (5) Character of Declaration: Average. The average quantity of contents in the package of a particular lot, shipment, or delivery shall at least equal the declared quantity, and 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.

3.09: 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.
- (a) Location. The declaration or declarations of quantity of the contents of a package shall appear in the bottom 30% of the principal display panel or panels, except as otherwise provided in 202 CMR 3.11(7) Cylindrical Containers.
 - (b) Style of Type or Lettering. The declaration or declarations of quantity 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, except that a declaration of net quantity blown, formed, or molded on a glass or plastic surface is permissible when all label information is blown, formed, or molded on the surface.
 - (c) Color Contrast. The declaration or declarations of quantity 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 shall not be required to be presented in a contrasting color if no required label information is on the surface in a contrasting color.
 - (d) Free Area. The area surrounding the quantity declaration shall be free of printed information
 1. above and below, by a space equal to at least the height of the lettering in the declaration, and
 2. to the left and right, by a space equal to twice the width of the letter "N" of the style and size of type used in the declaration.
 - (e) Parallel Quantity Declaration. The quantity declaration shall be presented in such a manner as to be generally parallel to the declaration of identity and to the base on which the package rests as it is designed to be displayed.

3.09: continued

(2) Calculation of Area of Principal Display Panel for Purposes of Type Size. The square- inch area of the principal display panel shall be

- (a) in the case of a rectangular container, one entire side which properly can be considered to be the principal display panel, the product of the height times the width of that side;
- (b) in the case of a cylindrical or nearly cylindrical container, 40% of the product of the height of the container times the circumference; or
- (c) in the case of any other shaped container, 40% of the total surface of the container, unless such container presents an obvious principal display panel (e.g., the top of a triangular or circular package of cheese, or the top of a can of shoe polish), the area shall consist of the entire such surface.

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.

(d) Minimum Height of Numbers and Letters. The height of any letter or number in the required quantity declaration shall be not less than that shown in Table 1 in 202 CMR 3.09 with respect to the square-inch area of the panel, and the height of each number of a common fraction shall meet one-half the minimum height standards.

(e) Numbers and Letters: Proportion. No number or letter shall be more than three 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 of container	Minimum height; label information blown, formed or molded on surface
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

3.10: Prominence and Placement: Non-consumer Packages

All information required to appear on a Non-consumer package shall be definitely and clearly stated thereon in the English language. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

3.11: Requirements: Specific Consumer Commodities, Packages, Containers

(1) Display Card Package. For an individual package affixed to a display card, or for a commodity and display card together comprising a package, the type size of the quantity declaration is governed by the dimensions of the display card.

3.11: continued

(2) Eggs. When cartons containing 12 eggs have been designed so as to permit division in half by the retail purchaser, the required quantity declaration shall be so positioned as to have its context destroyed when the carton is divided.

(3) Aerosols and Similar Pressurized Containers. The declaration of quantity on an aerosol package, and on a similar pressurized package, shall disclose the net quantity of the commodity (including propellant), in terms of weight, that will be expelled when the instructions for use as shown on the container are followed.

(4) Multi-Unit Packages. Any package containing more than one individual "commodity in package form" (see 202 CMR 3.03(1)) of the same commodity 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:

Provided, that the requirement for a declaration of the total quantity of contents of a multi-unit package shall be effective with respect to those labels revised after the effective date of this regulation, or as of January 1, 1970, whichever occurs first. Any such declaration of total quantity shall not be required to include the parenthetical quantity statement of a dual quantity representation.

(5) Combination Packages. Any package containing individual units of dissimilar commodities (such as an antiquing kit, for example) shall bear on the label of the package a quantity declaration for each unit.

(6) Variety Packages. Any package containing individual units of reasonably similar commodities (such as, for example, seasonal gift packages, variety packages of cereal) shall bear on the label of the package a declaration of the total quantity of commodity in the package.

(7) Cylindrical Containers. In the case of cylindrical or nearly cylindrical containers, information required to appear on the principal display panel 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 at retail to be used as containers for other materials or objects, such as bags, cups, boxes, and pans, shall be labeled with the 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 two dimensions because of the absence of a gusset, the width and length will be expressed in inches, except that a dimension of 2 feet or more will 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 will be expressed as width, depth, and length, in terms of inches, except that any dimension of two feet or more will 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 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 two 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, except cups, and the like, in terms of count followed by diameter and depth, except depth need not be listed when less than two inches. (Example: "4 pie pans, 8 in diameter x 4 in.")

3.11: continued

(b) Capacity. When the functional use of the container is related by label references in standard terms of measure to the capability of holding a specific quantity of substance or class of substances such references shall be a part of the net quantity statement and shall specify capacity as follows:

1. Liquid measure for containers which are intended to be used for liquids, semisolids, viscous materials, or mixtures of solids and liquids. The expressed capacity will be stated 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 for containers which are intended to be used for solids. The expressed capacity will be stated 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. Where containers are used as liners for other more permanent containers, in the same terms as are 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.")

Notwithstanding the above requirements, the net quantity statement for containers such as cups will be listed in terms of count and liquid capacity per unit. (Example: "24 cups, 6 fl oz capacity.") For purposes of 202 CMR 3.11(8), 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 if normally sold in pairs (such as hosiery, gloves, and shoes) sold as single-unit pairs, shall be exempt from the requirements for a net quantity statement by count, as required by 202 CMR 3.07(3).

(b) Textiles. Bed sheets, blankets, pillowcases, comforters, quilts, bed-spreads, 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, etc., shall be exempt from the requirements of 202 CMR 3.07(8)(g):

Provided, that

1. The quantity statement for 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," "king," etc. (Example: "Twin Fitted Sheet for 39 x 75 in mattress.")
2. The quantity statement for flat sheets shall state the size designation of the mattress for which the sheet is designed, such as "twin," "double," "king," etc. 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. The quantity statement for pillowcases shall state the size designation of the pillow for which the pillowcase is designed, such as "youth," "standard," and "queen," etc. 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. The quantity statement for 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," "king," etc.
5. The quantity statement for tablecloths and napkins shall state, in inches, the length and width of the finished item. The quantity statement also may state parenthetically, in inches, the length and width of the item before hemming and properly identified as such.

3.11: continued

6. The quantity statement for curtains, drapes, flags, furniture scarfs, etc. 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. The quantity statement for 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 item. The quantity statement also may state parenthetically, in inches, the length of any ornamentation.
8. The quantity statement for woven dish towels, dish cloths, towels, face cloths, utility cloths, bath mats, etc. shall state, in inches, the length and width of the item. The quantity statement for such items, when knitted, need not state the dimensions.
9. The quantity statement for textile products such as potholders, fixture and appliance covers, non-rectangular diapers, slip covers, etc. shall be stated in terms of count and may include size designations and dimensions.
10. The quantity statement for other than rectangular textile products identified in 202 CMR 3.11(9)(b)1 through 3.11(9)(b)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. The quantity statement for 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.

1. For an item with no declared dimension less than 24 inches, a minus variation greater than 3% of a declared dimension and a plus variation greater than 6% of a declared dimension should be considered unreasonable.
2. For an item with a declared dimension less than 24 inches, a minus variation greater than 6% of a declared dimension and a plus variation greater than 12% of a declared dimension should be considered unreasonable.

(d) Exemption: Variety Textile Packages. Variety packages of textiles which are required by reason of 202 CMR 3.07(4) to provide a combination declaration stating the quantity of each individual unit, shall be exempt from the requirements in 202 CMR 3.00 for:

1. Location (See 202 CMR 3.09(1)(a),
2. Free area (See 202 CMR 3.09(1)(d), and
3. Minimum height of numbers and letters (See 202 CMR 3.09(2).

(e) Sewing Threads, Handicraft Threads, Yarns. Sewing and handicraft threads shall be exempt from the requirements of 202 CMR 3.07(8)(b):Provided, that

1. The net quantity statement for sewing and handicraft threads shall be expressed in terms of yards.
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 director.
4. Each unit of industrial thread shall be marked to show its net measure in terms of yards or its net weight in terms of avoirdupois pounds or ounces, except that ready-wound bobbins which are not sold separately, shall not be required to 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.

3.12: 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 see 202 CMR 3.11(4)(c)).

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3.12: continued

- (2) Random Packages. A random package bearing a label conspicuously declaring
- (a) the net weight,
 - (b) the price per pound, and
 - (c) the total price

shall be exempt from the type size, dual declaration, placement, and free area requirements of 202 CMR 3.00. In the case of a random package 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 202 CMR 3.12.

(3) Small Confections. Individually wrapped pieces of "penny candy" and other confectionery of less than ½ ounce net weight per individual piece shall be exempt from the labeling requirements of 202 CMR 3.00 when the container in which such confectionery is shipped is in conformance with the labeling requirements of 202 CMR 3.00. Similarly, when such confectionery items are sold in bags or boxes, such items shall be exempt from the labeling requirements of 202 CMR 3.00, including the required declaration of net quantity of contents, when the declaration of the bag or box meets the requirements of 202 CMR 3.00.

(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 intended for sale at retail, shall be exempt from the required declaration of net quantity of contents specified in 202 CMR 3.00.

(5) Cuts, Plugs, and Twists of Tobacco and Cigars. When individual cuts, plugs, and twists of tobacco and individual cigars are shipped or delivered in containers that conform to the labeling requirements of 202 CMR 3.00, such individual cuts, plugs, and twists of tobacco and cigars shall be exempt from such labeling requirements.

(6) Reusable (Returnable) Glass Containers. Nothing in 202 CMR 3.00 shall be deemed to preclude the continued use of reusable (returnable) glass containers:

Provided, that such glass containers ordered after the effective date of 202 CMR 3.00 shall conform to all requirements of 202 CMR 3.00.

(7) Cigarettes and Small Cigars. Cartons of cigarettes and small cigars, containing ten individual packages of 20 labeled in accordance with the requirements of 202 CMR 3.00 shall be exempt from the requirements set forth in 202 CMR 3.09(1)(a). Location, 202 CMR 3.09(2). Minimum Height of Numbers and Letters, and 202 CMR 3.11(4) Multi-Unit Packages:

Provided, that such cartons bear a declaration of the net quantity of commodity in the package.

(8) Packaged Commodities with Labeling Requirements Specified in Federal Law. Packages of meat and meat products, poultry and poultry products, tobacco and tobacco products, insecticides, fungicides, rodenticides, alcoholic beverages, and seeds shall be exempt from the requirements set forth in 202 CMR 3.07(8)(c). Weight: Dual Declaration 202 CMR 3.07(8)(d). Fluid Measure: Dual Quantity Declaration, 202 CMR 3.07(8)(e). Length Measure: Dual Quantity Declaration 202 CMR 3.07(8)(f). Area Measure: Dual Quantity Declaration, 202 CMR 3.09(1)(a). Location, and 202 CMR 3.09(2). Minimum Height of Numbers and Letters:

Provided, that quantity labeling requirements for such products are specified in Federal Law, so as to follow reasonably sound principles of providing consumer information.

3.12: continued

(9) Fluid Dairy Products, Ice Cream, and Similar Frozen Desserts.

- (a) When packaged in ½-liquid-pint and ½-gallon containers, are exempt from the requirements for stating net contents of eight fluid ounces and 64 fluid ounces, which may be expressed as ½ pint and ½ gallon, respectively.
- (b) When packaged in 1-liquid-pint, 1-liquid-quart, and ½ gallon containers, are exempt from the dual net contents declaration requirements of 202 CMR 3.07(8)(d).
- (c) When measured by and packaged in ½ liquid pint, 1-liquid pint, 1-liquid quart, ½-gallon, and 1-gallon measure containers as defined in "Measure Container Code of National Bureau of Standards Handbook 44," are exempt from the requirement of 202 CMR 3.09(1)(a) that the declaration of net contents be located within the bottom 30% of the principal display panel.
- (d) Milk and milk products when measured by and packaged in glass or plastic containers of ½-liquid pint, 1-liquid pint, 1-liquid quart, ½-gallon, and 1-gallon capacities are exempt from the placement requirement of 202 CMR 3.09(1)(a) that the declaration of net contents be located within the bottom 30% of the principal display panel, 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 that is at or above the shoulder of the container.

(10) Single Strength and Less Than Single Strength Fruit Juice Beverages, Imitations Thereof, and Drinking Water.

- (a) When packaged in glass, plastic, or fluid milk type paper containers of 8- and 64-fluid-ounce capacity, are exempt from the requirements of 202 CMR 3.07(5)(b) to the extent that net contents of 8 fluid ounces and 64 fluid ounces (or 2 quarts) may be expressed as ½ pint (or half pint) and ½ gallon (or half gallon), respectively.
- (b) When packaged in glass, plastic, or fluid milk type paper containers of 1-pint, 1-quart, and ½-gallon capacities, are exempt from the dual net contents declaration requirements of 202 CMR 3.07(8)(d).
- (c) When packaged in glass or plastic containers of ½-pint, 1-pint, 1-quart, ½-gallon, and 1-gallon capacities, are exempt from the placement requirement of 202 CMR 3.09(1)(a) that the declaration of net contents be located within the bottom 30% of the principal display panel:
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 into or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.

(11) Soft-Drink Bottles. Bottles of soft drinks shall be exempt from the placement requirements for the declaration of

- (a) identity, when such declaration appears on the bottle closure, and
- (b) quantity, when such declaration is blown, formed, or molded on or above the shoulder of the container and when all other information required by 202 CMR 3.00 appears only on the bottle closure.

(12) Multi-Unit Soft-Drink Packages. Multi-unit packages of soft drinks are exempt from the requirement for a declaration of

- (a) responsibility, when such declaration appears on the individual units and is not obscured by the multi-unit packaging, or when the outside container bears a statement to the effect that such declaration will be found on the individual units inside, and
- (b) identity, when such declaration appears on the individual units and is not obscured by the multi-unit packaging.

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3.12: continued

(13) Butter. When packaged in 4-ounce, 8-ounce, and 1-pound units with continuous label copy wrapping, butter is exempt from the requirements that the statement of identity 202 CMR 3.04(1) and the net quantity declaration 202 CMR 3.09(1)(e) be generally parallel to the base of the package. When packaged in 8-ounce and 1-pound units, butter is exempt from the requirement for location 202 CMR 3.09(1)(a) of net quantity declaration and, when packaged in 1-pound units, is exempt from the requirement for dual quantity declaration 202 CMR 3.07(8)(c).

(14) Eggs. Cartons containing 12 eggs shall be exempt from the requirement for location 202 CMR 3.09(1)(a) of net quantity declaration. When such cartons are designed to permit division in half, each half shall be exempt from the labeling requirements of 202 CMR 3.00 if the undivided carton conforms to all such requirements.

(15) Flour. Packages of wheat flour packaged in units of 2, 5, 10, 25, 50, and 100 pounds shall be exempt from the requirement in 202 CMR 3.00 for location 202 CMR 3.09(1)(a) of the net quantity declaration and, when packaged in units of two pounds, shall be exempt also from the requirement for a dual quantity declaration 202 CMR 3.07(8)(c).

(16) Small Packages. On a principal display panel of five square inches or less, the declaration of quantity need not appear in the bottom 30% of the principal display panel if that declaration satisfies the other requirements of 202 CMR 3.00.

(17) Decorative Containers. The principal display panel of a cosmetic marketed in a "boudoir-type" container including decorative cosmetic containers of the "cartridge," "pillbox," "compact," or "pencil" variety, and those with a capacity of ¼ ounce or less, may be a tear-away tag or tape affixed to the decorative container and bearing the mandatory label information as required by 202 CMR 3.00.

(18) Combination Packages. Combination packages are exempt from the requirements in 202 CMR 3.00 for

- (a) Location (see 202 CMR 3.09(1)(a)),
- (b) Free area (see 202 CMR 3.09(1)(d)), and
- (c) Minimum Height of Numbers and Letters (see 202 CMR 3.09(2)).

(19) Margarine. Margarine in 1-pound rectangular packages, except for packages containing whipped or soft margarine or packages containing more than four sticks, shall be exempt from the requirement in 202 CMR 3.00 for location (see 202 CMR 3.09(1)(a)) of the net quantity declaration, and shall be exempt from the requirement for a dual quantity declaration (see 202 CMR 3.07(8)(c)).

(20) Corn Flour. Corn flour packaged in conventional 5, 10, 25, 50, and 100-pound bags shall be exempt from the requirement in 202 CMR 3.00 for location (see 202 CMR 3.09(1)(a)) of the net quantity declaration.

(21) 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, Drug, and Cosmetic Act shall be exempt from the provisions of 202 CMR 3.00.

(22) Camera Film. Camera film packaged and labeled for retail sale is exempt from the net quantity statement requirements of 202 CMR 3.00 which specify how measurement of commodities should be expressed:

Provided, that

- (a) The net quantity of contents on packages of movie film and bulk still film is expressed in terms of the number of lineal feet of usable film contained therein.
- (b) The net quantity of contents on packages of still film is expressed in terms of the number of exposures the contents will provide. The length and width measurements of the individual exposures, expressed in millimeters or inches, are authorized as an optional statement. (Example: "36 exposures, 36 x 24 mm" or "12 exposures, 2¼ x 2¼ in.")

3.12: continued

(23) Paints and Kindred Products. Paints, varnishes, lacquers, thinners, removers, oils, resins, and solvents, when packed in 1-liquid-pint and 1-liquid-quart units shall be exempt from the dual quantity declaration requirements of 202 CMR 3.07(8)(d).

(24) Automotive Cooling System Antifreeze. Antifreeze, when packed in 1-liquid-quart units, in metal or plastic containers, shall be exempt from the dual quantity declaration requirements of 202 CMR 3.07(8)(d).

(25) Motor Oils. Motor oils, when packed in 1-liquid-quart units, shall be exempt from the dual quantity declaration requirements of 202 CMR 3.07(8)(d). Additionally, motor oil in 1-liquid-quart, 1-gallon, 1¼-gallon, 2-gallon, and 2½-gallon units, bearing the principal display panel on the body of the container, is exempt from the requirements of 202 CMR 3.04. IDENTITY, to the extent that the SAE grade is required 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 ¼ inch.

3.13: Variations to be Allowed(1) Packaging Variations.

(a) Variations from Declared Net Quantity. Variations from the declared net weight, measure, or count shall be permitted 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, and 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.

(b) Variations Resulting from Exposure. 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:

Provided, that the phrase "introduced into intrastate commerce" as used in 202 CMR 3.13(1)(b) shall be construed to define the time and the place at which the first sale and delivery of a package is made within the state, the delivery being either

1. directly to the purchaser or to his agent, or
2. to a common carrier for shipment to the purchaser, and this paragraph shall be construed as requiring that, so long as a shipment, delivery, or lot of packages of a particular commodity remains in the possession or under the control of the packager or the person who introduces the package into intrastate commerce, exposure variations shall not be permitted.

(27) Magnitude of Permitted Variations. The magnitude of variations permitted under 202 CMR 3.13, 3.13(1), 3.13(1)(a), and 3.13(1)(b) shall, in the case of any shipment, delivery, or lot, be determined by the facts in the individual case.

REGULATORY AUTHORITY

202 CMR 3.00: M.G.L. c. 94, § 182

NON-TEXT PAGE