

TITLE 42
LEGISLATIVE RULES
DEPARTMENT OF LABOR

SERIES 10
PACKAGING AND LABELING

§42-10-1. General.

1.1. Scope. -- These are legislative rules and regulations for packing and labeling of products offered for sale.

1.2. Authority. -- W. Va. Code §47-1-24

1.3. Filing Date. -- June 1, 1976

1.4. Effective Date. -- July 1, 1976

§42-10-2. Application.

2.1. This regulation shall apply to packages and to commodities in package form, but shall not apply to:

(a) Inner wrappings not intended to be individually sold to the consumer;

(b) 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 nonconsumer commodities, as defined herein;

(c) 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;

(d) 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), or;

(e) 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 this regulation.

§42-10-3. Definitions.

3.1. 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 not marked a selling price based on 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 this regulation, it shall be construed to mean "Commodity in Package Form" as herein defined.

3.2. 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 used 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.

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

3.4. 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.

3.5. 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 non-promotional 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 this regulation.

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

3.7. 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."

3.8. 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 sold in full compliance with all requirements of this regulation.

§42-10-4. Identity.

4.1. 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 unless the same can easily be identified through the wrapper or container.

4.2. Parallel Identity Declaration: Consumer Package - A declaration of identity on a consumer package shall appear generally to the base on which the package rests as it is designed to be displayed.

§42-10-5. Declaration Of Identity: Nonconsumer Package.

5.1. A declaration of identity on a nonconsumer 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 unless the same can easily be identified through the wrapper or container.

§42-10-6. Declaration Of Responsibility: Consumer And Nonconsumer Packages.

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

If a person manufacturers, 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 phrase that reveals the connection such person has with the

commodity, such as "Manufactured for ~~the~~ and packaged by _____," "Distributed by _____," or any other wording of similar import that expresses the facts.

§42-10-7. Declaration Of Quantity: Consumer Packages.

7.1. 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 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.

7.2. 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 the consumer package and, unless otherwise specified in this regulation (see subsections 7.10 through 7.16), shall be in terms of the largest whole unit.

7.3. 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.

7.4. Lines of Print or Type - A declaration of quantity may appear on one or more lines of print or type.

7.5. Terms: Weight, Liquid Measure, or Count - The declarations 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 quantity of a particular commodity, such quantity of a particular commodity may be expressed in its traditional terms; if such traditional declaration gives accurate and adequate information as to the quantity of the commodity.

7.6. 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 weight, measure, and size of the individual units unless a declaration of count alone is fully informative.

7.7. 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 or two hundred and thirty-one (231) cubic inches or liquid-quart, liquid-pint, or fluid ounce subdivisions of the gallon, and shall express the volume at sixty-eight degrees Fahrenheit (twenty degrees celsius), except in the case of petroleum products, for which the declaration shall express the volume at sixty degrees Fahrenheit (15.6 degrees celsius), 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 forty (40) degrees Fahrenheit (four degree celsius);

(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 2,150.40 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.

7.8. Abbreviations - Any of the following abbreviations for customary units, and none other, may be employed in the quantity statement on a package of commodity:

avoirdupois -- avdp; cubic -- cu; feet/foot -- ft; fluid -- fl; gallon -- gal; inch -- in; liquid -- liq; ounce -- oz; pint -- pt; pound -- lb; quart -- qt; square -- sq; weight -- wt and yard -- yd.

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

7.9. Symbols - Any of the following metric symbols may be employed in the quantity statement on a package of commodity:

metre -- m; millimeter -- mm; square metre -- m²; litre -- l; gram -- g and kilogram -- kg.

(a) The litre is widely used for volume in preference to its equivalent, the cubic decimetre (dm to the third power).

(b) Symbols are not capitalized unless the unit is derived from proper name. Periods should not be used after the symbol. Symbols are always written in the singular form; do not add "s" to express the plural when the symbol is used.

(c) Multiples and submultiples of the above units and symbols may be used provided they follow the guidelines of the International System (SI) of Units of ISO Standard 1000.

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 to 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".

7.10. 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 (4) Feet, Four (4) Square Feet, Four (4) Pounds, One (1) Gallon, or More-In the case of:

(1) Length of measure of four (4) 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;

(2) Area measure of four (4) square feet or more;

(3) Weight of four (4) pounds or more;

(4) Fluid measure of one (1) gallon or more, the declaration of quantity shall be expressed in terms of the largest whole unit.

7.11. Weight: Dual Quantity Declaration - On packages containing one (1) pound or more but less than four (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: **Provided**, That the quantity declaration appearing on a random package may be expressed in terms of pounds and decimal fractions of a pound carried out to not more than two decimal places.

7.12. Fluid Measure: Dual Quantity Declaration - On packages containing one (1) pint or more but less than one (1) 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.

7.13. Length Measure: Dual Quantity Declaration - On packages containing one (1) foot but less than four (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.

7.14. Area Measure: Dual Quantity Declaration - On packages containing one (1) square foot but less than four (4) square feet, the declaration shall be expressed in square inches and, in addition, shall be followed by a declaration in parentheses, expressed in term of the largest whole unit.

7.15. Bi-dimensional commodities - For bi-dimensional commodities (including roll-type commodities) the quantity declaration shall be expressed:

(a) If less than one (1) square foot, in terms of linear inches and fractions linear inches;

(b) If at least one (1) square foot but less than than four (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 largest whole unit: **Provided**, That

(1) No square inch declaration is required for a bi-dimensional commodity of four (4) inches width or less,

(2) A dimension of less than two (2) feet may be stated in inches within the parenthetical, and

(3) Commodities consisting of usable individual units (except roll-type commodities with individual usable units created by perforations, for which see subsection 7.16 Count: Ply) require a declaration of unit area but not a declaration of the total area of all such units;

(c) If four (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: **Provided**, That

(1) No declaration in square feet is required for a bi-dimensional commodity with a width of four inches or less,

(2) Bi-dimensional commodities, with a width of four (4) inches or less, shall have the length expressed in inches followed by a statement in parentheses of the length in the largest whole unit. (Example: two (2) inches by three hundred and sixty (360) inches (ten (10) yards)),

(3) A dimension of less than two (2) feet may be stated in inches within the parenthetical, and

(4) No declaration in square feet is required for commodities for which the length and width measurements are critical in terms of the end use (such as tablecloths or bedsheets) if such commodities clearly present the length and width measurements on the label.

7.16. 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

- (a) Total area measurement;
- (b) Number of ply;
- (c) Count of usable units, and
- (d) Dimensions of a single usable unit.

7.17. 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 halves, quarters, eighths, sixteenths, or thirty-seconds, 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 thirds. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than two (2) places.

7.18. 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 other panels.

7.19. Qualifications 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.

§42-10-8. Declarations Of Quantity: Nonconsumer Packages.

8.1. Location - A nonconsumer 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 subsection 7.1. Largest Whole Unit).

8.2. Terms; Weight, Liquid Measure or, Count. -- The declaration of the quantity of a particular commodity shall be expressed in the 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.

8.3. 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 two hundred and thirty-one (231) cubic inches or liquid-pint, of fluid-ounce subdivisions of the gallon shall express the volume at sixty-eight (68) degrees Fahrenheit (twenty (20) degrees celsius), except in the case of the petroleum products, for which the declaration shall express the volume at sixty (60) degrees Fahrenheit (15.6 degrees celsius), 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 sold in the refrigerated state, for which the declaration shall express the volume at forty (40) degrees Fahrenheit (four (4) degree celsius);

(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 this subsection shall prohibit the labeling of nonconsumer packages in terms of units of the metric system.

8.4. Abbreviations - Any generally accepted abbreviation of unit name may be employed in the quantity statement on a package of commodity. (For commonly accepted abbreviations, see subsection 7.8. Abbreviations.)

8.5. 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 averages in other

packages in the same shipment, delivery, or lot compensate for such shortage.

§42-10-9. Prominence And Placement: Consumer Packages.

9.1. 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.

9.2. Location - The declaration or declarations of quantity of the contents of a package shall appear in the bottom thirty (30%) percent of the principal display panel or panels. For cylindrical containers, see also subsection 11.7 for additional requirements.

9.3. Style of Type or Lettering - The declaration or declarations of the quantity shall be in such style or 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.

9.4. Color Contrast - The declaration or declarations of quantity shall be in 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 contrasting color.

9.5. Free Area - The area surrounding the quantity declaration shall be free of printed information.

(a) Above and below, by a space equal to at least the height of the lettering in the declaration, and

(b) 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.

9.6. Parallel Quantity Declaration - The quantity declaration shall be presented in such manner as to be generally parallel to the declaration of identity and to the base of which the package rests as it is designed to be displayed.

9.7. Calculation of Area of Principal Display 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 cylindrical or nearly cylindrical container, forty percent (40%) of the product of the height of the container times the circumference; or

(c) In the case of any other shaped container, forty percent (40%) of the total surface of the container, unless such container presents an obvious principal display panel (e.g., 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 and jars.

9.8. Minimum Height of Numbers and Letters - The height of any letter or number in the required quantity declaration shall not be less than that shown in Table 1 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.

9.9. Numbers and Letters: Proportion - No number or letter shall be more than three (3) times as high as it is wide. See Table 42-10A at the end of this regulation.

**§42-10-10. Prominence And Placement:
Nonconsumer Packages.**

10.1. General - All information required to appear on a nonconsumer 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.

§42-10-11. Requirements: Specific Consumer Commodities, Packages, Containers.

11.1. 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.

11.2. Eggs - When cartons containing twelve (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.

11.3. 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 the use as shown on the container are followed.

11.4. Multi-Unit Packages - Any package containing more than one individual "Commodity" in Package Form (see subsection 3.1) 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 packages: **Provided**, That any such declaration of total quantity shall not be required to include the parenthetical quantity statement of a dual quantity representation.

11.5. Combination Packages - Any package containing individual units of dis-similar

commodities (such as antiquing kit, for example) shall bear on the label of the package a quantity declaration for each unit.

11.6. Variety Packages - Any package containing individual units of reasonably similar commodities (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.

11.7. Cylindrical Containers - In the case of cylindrical or nearly cylindrical containers, information required to appear on the principal display panel shall appear within that forty percent (40%) of the circumference which is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

11.8. 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 the 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 (2) dimensions because of the absence of a gusset, the width and length will be expressed in inches, except that a dimension of two (2) feet or more will be expressed in feet with any remainder in terms of inches or common or decimal fraction of the foot (Examples: "25 bags, 17 in x 20 in" or "100 bags, 20 in x 6 in" or "50 bags, 20 in x 2-1/2 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 (2) feet or more will be expressed in feet with any remainder in terms of inches or common or decimal fraction of the foot. (Examples: "25 bags, 17 in x 4 in x 20 in" or "100 bags, 20 in x 12 in x 2-1/2 ft.")

(2) For other square, oblong, rectangular, or similar shaped containers, in terms of count followed by length, width, and depth, except depth need not be listed when less than two (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, except cups, and the like, in terms of count followed by diameter and depth, except depth need not be listed when less than 2 inches. (Example: "4 pie pans, 8 in. diameter x 4 in.")

11.9. 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:

(a) 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.")

(b) 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. (Examples: Leaf Bags - "8 bags, 6-bushel capacity, 3 ft 9 in, fits up to 30-gallon can.")

(c) 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 can.")

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 this

section, the use of the terms "Capacity", "Diameter", and "Fluid" is optional.

11.10. 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 a single-unit pairs, shall be exempt from the requirements for a net quantity statement by count, as required by subsection 7.5 of the regulation.

(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, etc., shall be exempt from the requirements of subsection 7.17 of this regulation: **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. (Examples: "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 also shall state, 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 designated of the pillow for which the pillowcase is designed, such as "Youth", "Standard", "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 in before hemming)").

(4) The quantity statement for blankets, comforters, quilts, bedspread, mattress pads, afghans, and throws shall state, in inches, the length and width of the finished item. The quantity statements 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.

(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 pot holders, 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 subsection one (1) through eight (8)

shall state the geometric shape of the product and the dimensions which are customarily used in describing such 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 accomplished 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 dimensions less than twenty-four (24) inches, a minus variation greater than three percent (3%) of a declared dimension and plus variation greater than six percent (6%) of a declared dimension should be considered unreasonable.

(2) For an item with a declared dimension of less than twenty-four (24) inches, a minus variation greater than six percent (6%) of a declared dimension and a plus variation greater than twelve percent (12%) of a declared dimension should be considered unreasonable.

(d) Exemption: Variety Textile Packages - Variety packages of textiles which are required by reason of subsection 7.6 to provide a combination declaration stating the quantity of each individual unit, shall be exempt from the requirements in this regulation for:

(1) Location (See subsection 9.2),

(2) Free area (See subsection 9.5),

and

(3) Minimum height of numbers and letters (See subsection 9.8).

(e) Sewing Threads, Handicraft Threads, and Yarn - Sewing and handicraft threads shall be exempt from the requirements of subsection 7.12 of this regulation: **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.

11.11. Package Seed - Packages of seeds intended for planting shall be labeled in full accord with this regulation except as follows:

(a) The quantity statement shall appear in the upper thirty percent (30%) of principal display panel.

(b) The quantity statements shall be in terms of 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 eight (8) ounces; packaged seeds eight (8) ounces or more shall not be subject to Section 11.10.

(c) The quantity statement for coated seed, encapsulated seed, pelletized seed, pre-planters, seed tapes, etc., shall be in terms of count.

(d) Section 11.10. shall apply only to labels (1) revised after the effective date of this regulation or (2) as of July 1, 1974, whichever occurs first.

§42-10-12. Exemptions.

12.1. 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 Subsection 11.4(c)).

12.2. 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 requirement of this regulation. In the case of a random package packed at one place for subsequent sale at another, neither the price per unit or weight nor the total selling price need appear on the package, provided the package label includes both such prices at the same 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.

12.3. Small Confections - Individually wrapped pieces of "penny candy" and other confectionary of less than one-half ounce net weight per individual piece shall be exempt from the labeling requirements of this regulation when the container in which such confectionary is shipped is in conformance with the labeling requirements of this regulation. Similarly, when such confectionary items are sold in bags or boxes, such items shall be exempt from the labeling requirements of this regulation, including the required declaration of net quantity of contents, when the declaration of the bag or box meets the requirements of this regulation.

12.4. Individual Servings - Individual-serving-size packages of foods containing less than 1/2 ounce or less than 1/2 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 this regulation.

12.5. 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 this regulation, such individual cuts, plugs, and twists of tobacco and cigars shall be exempt from such labeling requirements.

12.6. Reusable (Returnable) Glass Containers - Nothing in this regulation shall be deemed to preclude the continued use of reusable (returnable) glass containers: **Provided**, That such glass containers ordered after the effective date of this regulation shall conform to all requirements of this regulation.

12.7. Cigarettes and Small Cigars - Cartons of cigarettes and small cigars, containing ten (10) individual packages of twenty(20), labeled in accordance with the requirements of this regulation shall be exempt from the requirements set forth in Subsection 9.2 Location, Subsection 9.8 Minimum Height of Numbers and Letters, and Subsection 11.4 Multi-unit Packages: **Provided**, That such cartons bear a declaration of net quantity of commodity in the package.

12.8. 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 and alcoholic beverages shall be exempt from the requirements set forth in Subsections 7.11 Weight: Dual Declaration, 7.12 Fluid Measures: Dual Quantity Declaration, 7.13 Length Measure; Dual Quantity Declaration 7.14 Area Measure: Dual Quantity Declaration, 9.2 Location, and 9.8 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.

12.9. Fluid Dairy Products, Ice Cream, and Similar Frozen Desserts.

(a) When packaged in 1/2-liquid-pint and 1/2-gallon containers, are exempt from the requirements for stating net contents of eight (8) fluid ounces and sixty-four (64) fluid ounces, which may be expressed as 1/2 pint and 1/2 gallon, respectively.

(b) When packaged in 1-liquid-pint, 1-liquid-quart, and 1/2 gallon containers, are exempt from the dual net contents declaration requirements of Subsection 7.12.

(c) When measured by and packaged in 1/2-liquid-pint, 1-liquid-pint, 1-liquid-quart, 1/2-gallon and 1-gallon measure containers as defined in "Measure Container Code of National Bureau of Standards Handbook 44", are exempt from the requirements of Subsection 9.2 that the declaration of the net contents be located within the bottom thirty percent (30%) of the principal display panel.

(d) Milk and milk products when measured by and packaged in glass or plastic containers of 1/2-liquid-pint, 1-liquid-pint, 1-liquid-quart, 1/2-gallon, and 1-gallon capacities are exempt from placement requirements of Subsection 9.2 that the declaration of net contents be located within the bottom thirty percent (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.

12.10. 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 eight (8) and sixty-four (64) fluid ounce capacity, are exempt from the requirements of Subsection 7.7 (b), to the extent that net contents of eight (8) fluid ounces and sixty-four (64) fluid ounces (or two (2) quarts) may be expressed as 1/2 pint (or half pint) and 1/2 gallon (or half gallon), respectively.

(b) When packaged in glass, plastic, or fluid milk type paper containers of one (1) pint, one (1) quart and 1/2 gallon capacities, are exempt from the dual net contents declaration requirements of Subsection 7.12.

(c) When packaged in glass or plastic containers of 1/2 pint, one (1) pint, one (1) quart, 1/2 gallon and one (1) gallon capacities, are exempt from the placement requirement of Subsection 9.2 that the declaration of net contents be located within the bottom thirty percent (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.

12.11. Soft-Drink Bottles - Bottles of soft drinks shall be exempt from 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 this regulation appears only on the bottle closure.

12.12. Multi-Unit Soft Drink Packages - Multi-unit packages of soft drinks are exempt from the requirements for a declaration of

(a) Responsibility, when such declaration appears on the individual units and is not obscured by multi-unit packaging, or when the outside containers bear 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.

12.13. Butter - When packaged in four (4) ounce, eight (8) ounce, and one (1) pound units with continuous label copy wrapping, butter is exempt from the requirements that the

statement of identity (Subsection 4.1) and the net quantity declaration (Subsection 9.6) be generally parallel to the base of the package. When packaged in eight (8) ounce and one (1) pound units, butter is exempt from the requirement for dual quantity declaration (Subsection 7.11).

12.14. Eggs - Cartons containing twelve (12) eggs shall be exempt from the requirements for location (Subsection 9.2) of net quantity declaration. When such cartons are designed to permit division in half, each half shall be exempt from the labeling requirements of this regulation if the undivided carton conforms to all such requirements.

12.15. Flour - Packages of wheat flour packaged in units of 2, 5, 10, 25, 50, and 100 pounds shall be exempt from the requirements in this regulation for location (Subsection 9.2) of the net quantity declaration and, when packaged in units of two (2) pounds, shall be exempt also from the requirement for a dual quantity declaration (Subsection 7.11).

12.16. Small Packages - On a principal display panel of five (5) square inches or less, the declaration of quantity need not appear in the bottom thirty percent (30%) of the principal display panel if that declaration satisfies the other requirements of this regulation.

12.17. Decorative 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 be a tear-away tag or tape affixed to the decorative container and bearing the mandatory label information as required by this regulation.

12.18. Combination Packages - Combination packages are exempt from the requirements in this regulation for

(a) Location (see Subsection 9.2)

(b) Free area (see Subsection 9.5)

(c) Minimum Height of Numbers and Letters (see Subsection 9.8)

12.19. Margarine - Margarine in one (1) pound rectangular packages, except for packages containing whipped or soft margarine or packages containing more than four sticks, shall be exempt from the requirements in this regulation for location (see Subsection 9.2) of the net quantity declaration, and shall be exempt from requirements for a dual quantity declaration (see Subsection 7.1).

12.20. Corn Flour - Corn flour packaged in conventional 5, 10, 25, 50, and 100 pound bags shall be exempt from the requirement in this declaration.

12.21. Prescription and Insulin-Containing Drugs - Prescription and insulin-containing drugs subject to the provision of §503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act shall be exempt from the provisions of this regulation.

12.22. Camera Film - Camera film packaged and labeled for retail sale is exempt from the net quantity statement requirements of this regulation 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, 2-1/4 x 2-1/4 in.")

12.23. Paints and Kindred Products.

(a) Paints, varnishes, lacquers, thinners, removers, oils, resins, and solvents, when packed in one (1)-liquid-pint and one (1)-liquid-quart units shall be exempt from the

dual quantity declaration requirements of Subsection 7.12.

(b) Tint base paint may be labeled on the principal display panel, as required by this regulation, in terms of quart or gallon including the addition of colorant selected by the purchaser, provided that the system employed ensures that the purchaser always obtains a quart or a gallon; and further provided that in conjunction with the required quantity statement on the principal display panel, a statement indicating that the tint base paint is not to be sold without the addition of colorant is presented: **And further provided**, That the contents of the container, before the addition of colorant, is stated in fluid ounces elsewhere on the label.

Wherever the above conditions cannot be met, containers of tint base paint must be labeled with a statement of the actual net contents prior to the addition of colorant in full accord with all requirements of this regulation.

12.24. Automotive Cooling System Antifreeze - Antifreeze, when packed in one (1)-liquid-quart units, in metal or plastic containers, shall be exempt from the dual quantity declaration requirements of Subsection 7.12.

12.25. Motor Oils - Motor oils, when packed in one (1)-liquid-quart units, shall be exempt from the dual quantity declaration requirements of Subsection 7.12. Additionally, motor oil in one (1)-liquid-quart, one (1)-gallon, one and one-fourth (1-1/4)-gallon, two (2)-gallon, and two and one-half (2-1/2)-gallon units, bearing the principal display panel on the body of the container, is exempt from requirements of Section 4. Identity, to the extent that the SAE viscosity number is required to appear on the principal display panel, provided the SAE viscosity number appears on the can lid and is expressed in letters and numbers in type size of at least one-fourth (1/4) inch.

12.26. Pillows, Cushions, Comforters, Mattress Pads, Sleeping Bags, and Similar Products - Those products, including pillows, cushions, comforters, mattress pads, and sleeping bags, that bear a permanent label as

designated by the Association of Bedding and Furniture Law Officials or by the California Bureau of Home Furnishings shall be exempt from the requirements for placement (Section 4.1 and 6), location (Section 1, size of letters or numbers (Section 9.8 and 9.9), and free area (Section 9.5) and the declarations of identity and responsibility: **Provided**, That declarations of identity, quantity, and responsibility are presented on a permanent attached label and satisfy the other requirements of this regulation; and further provided that the information on such permanently attached label be fully observable to the purchaser.

12.27. Commodities' Variable Weights and Sizes - Individual packaged commodities put up in variable weights and sizes for sale intact, and intended to be weighed and marked with the correct quantity statement prior to or at the point of retail sale, are exempt from the requirements of Section 7. Declaration of Quantity: Consumer Packages, while moving in commerce and while held for sale prior to weighing and marking: **Provided**, That the outside container bears a label declaration of the total net weight.

12.28. Packaged Commodities Sold by Count - When a packaged consumer commodity is properly measured in terms of count only, or in terms of count and some other appropriate unit, and the individual units are fully visible to the purchaser, such packages shall be labeled in full accord with this regulation except that those containing six (6) or less items need not include a statement of count.

12.29. Fishing Lines and Reels - Packaged fishing lines and reels are exempt from the dual quantity declaration requirements of Section 7.10 (a): **Provided**, That the quantity of capacity, as appropriated, is presented in terms of yards in full accord with all other requirements of this regulation.

§42-10-13. Variations To Be Allowed.

13.1. Packaging Variations.

(a) Variations from Declared Net Quantity - Variations from 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 interstate commerce. **Provided**, That the phrase "Introduction Into Interstate Commerce" as used in this paragraph 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 agency, 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 interstate commerce, exposure variations shall not be permitted.

13.2. Magnitude of Permitted Variations - The magnitude of variations permitted under Sections 13, 13.1 (a), 13.1 (b) of this regulation shall, in the case of any shipment, delivery, or lot, be determined by the facts in the individual case.

§42-10-14. Retail Sale Price Representation.

14.1. "Cents-Off" Representations.

(a) The term "Cents-Off Representation" means any printed matter consisting of the words "Cents-Off" or words of similar import, placed upon any consumer package or placed upon any label affixed or adjacent to such package, stating or representing by implication that it is being offered for sale at a price lower than the ordinary and customary retail sale price.

(b) Except as set forth in Section 13.2., the packager or labeler of a consumer commodity shall not have imprinted thereon a "Cents-Off" representation unless:

(1) The commodity has been sold at an ordinary and customary price in the most recent and regular course of business where the "Cents-Off" promotion is made.

(2) The commodity so labeled is sold at a reduction from the ordinary and customary price, which reduction is at least equal to the amount of the "Cents-Off" representation imprinted on the commodity package or label.

(3) Each "Cents-Off" representation imprinted on the package or label is limited to a phrase which reflects that the price marked by the retailer represents the savings in the amount of the "Cents-Off" the retailer's regular price, e.g., "Price Marked is _____ Cents Off the regular Price." "Price Marked is _____ Off the Regular Price of This Package"; provided, the package or label may in addition bear in the usual pricing spot a form reflecting a space for the regular price, the represented "Cents-Off" and a space for the price to be paid by the consumer.

(4) The commodity at retail presented the regular price, designated as the "Regular Price", clearly and conspicuously on the package or label of the commodity or on a sign, placard or shelf-marker placed in a position contiguous to the retail display of the "Cents-Off" marked commodity.

(5)a. Not more than three (3) "Cents-Off" promotions of any single size commodity may be initiated in the same trade area within a twelve (12) month period;

b. At least thirty (30) days must lapse between "Cents-Off" promotions of any particular size package or labeled commodity in a specific trade area; and

c. Any single size commodity so labeled may not be sold in a trade area for a duration in excess of six (6) months within any twelve (12) month period.

(6) Sales ^{of} ~~or~~ any single size commodity so labeled in a trade area ~~so~~ not exceed in volume fifty percent (50%) of the total volume of sales of such size commodity in the same trade area during any twelve (12) month period. The twelve (12) month period may be in the calendar, fiscal, or market year provided the identical period is applied in this subparagraph and subparagraph (5) of this paragraph. Volume limits may be calculated on the basis of projections for the current year but shall not exceed fifty percent (50%) of the sales for the preceding year in the event actual sales are less than the projection for the current year.

(c) No "Cents-Off" promotion shall be made available in any circumstances where it is known or there is reason to know that it will be used as an instrumentality for deception or for frustration of value comparison, e.g., where the retailer charges a price which does not fully pass on to the consumers the represented price reduction or where the retailer fails to display the regular price in the display area of the "Cents-Off" marked product.

(d) The sponsor of a "Cents-Off" promotion shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection and shall be retained for a period of one (1) year subsequent to the end of the year (calendar, fiscal or market) in which the "Cents-Off" promotion occurs.

14.2. Introductory Offers.

(a) The term "Introductory Offer" means any printed matter consisting of the words "Introductory Offer" or words of similar import, placed upon a package containing any new commodity or upon any label affixed or adjacent

to such new commodity, stating or representing by implication that such new commodity is offered for retail sale at a price lower than the anticipated ordinary and customary retail sale price.

(b) The packager or labeler of a consumer commodity may not have imprinted thereon an introductory offer unless:

(1) The product contained in the package is new, has been changed in a functionally significant and substantial respect, or is being introduced into a trade area for the first time.

(2) Each offer on a package or label is clearly and conspicuously qualified.

(3) No commodity so labeled ^{is} sold in a trade area for a duration in excess of six (6) months.

(4) At the time of making the introductory offer promotion, the offerer intends in good faith to offer the commodity, alone, at the anticipated ordinary and customary price for a reasonably substantial period of time following the duration of the introductory offer promotion.

(c) The packager or labeler of a consumer commodity shall not have imprinted thereon an introductory offer in the form of a "Cents-Off" representation unless, in addition to the requirements in paragraph (b) of this section:

(1) The package or label clearly conspicuously and in immediate conjunction with the phrase "Introductory Offer" bears the phrase "_____ Cents-Off the After-Introductory Offer Price."

(2) The commodity so labeled is sold at a reduction from the anticipated ordinary customary price, which reduction is at least equal to the amount of the reduction from the after-introductory offer price representation on the commodity package or label.

(d) No introductory offer with a "Cents-Off" representation shall be made

available in any circumstances where it is known or there is reason to know that it will be used as an instrumentality for deception or for frustration of value comparison, e.g., where the retailer charges a price which does not fully pass on to the consumer the represented price reduction.

(e) The sponsor of an introductory offer shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection and shall be retained for a period of one (1) year subsequent to the period of the introductory offer.

14.3. Economy Size.

(a) The term "Economy Size" means any printed matter consisting of the words "Economy Size", "Economy Pack", "Budget Pack", "Bargain Size", "Value Size", or words of similar import placed upon any package containing any consumer commodity or placed upon any label affixed or adjacent to such commodity, stating or representing directly or by implication that a retail sale price advantage is afforded to the purchaser thereof by reason of the size of the package or the quantity of its contents.

(b) The packager or labeler of a consumer commodity may not have imprinted thereon an "Economy" size representation unless:

(1) At the same time the same brand of the commodity is offered in at least one other package size or labeled form.

(2) Only one (1) packaged or labeled form of that brand of commodity labeled with an "Economy Size" representation is offered.

(3) The commodity labeled with an "Economy Size" representation is sold at a price per unit of weight, volume, measure, or count which is substantially reduced (i.e., at least five percent (5%)) from the actual price of all other packaged or labeled units of the same brand of that commodity offered simultaneously.

(c) No "Economy Size" package shall be made available in any circumstances where it is known that it will be used as an instrumentality for deception, e.g., where the retailer charges a price which does not pass on to the consumer the substantial reduction in cost per unit initially granted.

(d) The sponsor of any "Economy Size" package shall prepare and maintain invoices or other records showing compliance with paragraph (b) of this section. The invoices or other records required by this section shall be open to inspection and shall be retained for one (1) year.

§42-10-15. Revocation of Conflicting Regulations.

All provisions of all orders and regulations heretofore issued on this same subject that are contrary to or inconsistent with the provisions of this regulation, and specifically West Virginia Administrative Regulations, Commissioner of Labor, Chapter 21-2, Series 12 (1972) are hereby revoked.

KEN HECHLER
Secretary of State

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Deputy Secretary of State

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SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

TO: Andy Brown
AGENCY: Department of Labor
FROM: JUDY COOPER, DIRECTOR ADMINISTRATIVE LAW DIVISION
DATE: Nov. 20, 1990

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 10 TITLE Packaging & Labeling

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____
TITLE OF PERSON SIGNING: _____
DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Stephen L. Costa
TITLE OF PERSON SIGNING: Director, Weights & Measures Division
DATE: December 3, 1990