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Chapter ATCP 90

FAIR PACKAGING AND LABELING

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Note: This chapter is adopted under authority of ss. 93.07 (1), 97.09 (1) and (4), 97.42 (4) (j), 98.07 (3) and (4), and 100.20 (2), Stats. Violations of this chapter are subject to the penalties and remedies provided under ss. 97.72, 97.73, 98.26, 100.20 (5) and (6), and 100.26 (3) and (6), Stats. Commodities sold or distributed in violation of this chapter may be subject to holding orders or rejection orders issued under s. 97.12 (2), 97.42 (9) (b) or 98.05 (2), Stats. Rules contained in ch. ATCP apply to commodities packaged after April 1, 1994.

Note: Chapter Ag 53 as it existed on May 31, 1973 was repealed and a new chapter Ag 53 was created, Register, May, 1973, No. 209, eff. 6–1–73. Chapter Ag 53 was renumbered chapter ATCP 90 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448. Chapter ATCP 90 as it existed on March 31, 1994 was repealed and a new chapter ATCP 90 was created effective April 1, 1994.

ATCP 90.01 Definitions. As used in this chapter:

(1) “Alcohol beverage” has the meaning given under s. 125.02 (1), Stats.

(2) “Bottled water” means all water packaged in bottles or other containers and sold or distributed for drinking purposes. “Bottled water” includes distilled water, artesian water, spring water and mineral water, whether carbonated or uncarbonated.

(3) “Common fraction” means a numerical fraction, consisting of a numerator and denominator, which is reduced to its lowest terms and expressed in one of the following forms:

(a) In halves, quarters, eighths, sixteenths or thirty–seconds.

(b) In thirds, if the fraction pertains to a linear measure expressed in yards or feet.

(c) In another form, if that form is firmly established in general consumer usage and trade custom.

(4) “Commodity” means any product or commodity that is sold, offered for sale, or held or distributed for sale in this state. “Commodity” includes a consumer commodity.

(5) “Consumer commodity” means any of the following:

(a) Food as defined under s. 97.01 (6), Stats., except alcohol beverages.

(b) A drug as defined under 21 USC 321 (g) (1), except biological animal products, antibiotics, drugs dispensed by prescription and drugs containing insulin.

(c) A device as defined under 21 USC 321 (h).

(d) A cosmetic as defined under 21 USC 321 (i).

(e) An article, product or commodity that is all of the following:

1. Customarily produced and distributed for retail sale to consumers.

2. Used by consumers for purposes of consumption, personal care or the performance of household tasks.

3. In the process of use by consumers, is normally fully consumed or expended.

Note: A illustrative list of commodities included or excluded under par. (e) is available from the department. The list is based on interpretations made by the federal trade commission under 16 CFR 503.2 and 503.5 pursuant to the federal fair packaging and labeling act, 15 USC 1451 to 1461.

(6) “Consumer commodity in package form” means a consumer commodity that is enclosed in a package prior to retail sale. “Consumer commodity in package form” does not include any of the following:

(a) Bulk commodities that a consumer views and individually selects before the commodities are placed in a retail sale package.

(b) Unprocessed fruits or vegetables enclosed in transparent wrappings or containers, so that the fruit or vegetable contents are fully visible to the retail customer.

(c) Ready–to–eat restaurant foods or carryout foods served from bulk containers by the retailer.

(7) “Declaration of net quantity” means the declaration required to appear on the principal display panel of a package as provided under s. ATCP 90.04 (1).

(8) “Distribute” means to distribute for sale, whether at wholesale or retail.

(9) “Enforcement sample” means a sample of packages collected from an inspection lot according to s. ATCP 90.09 (2) (a).

(10) “Good packaging and distribution practices” means packaging and distribution practices that ensure, notwithstanding imperfections in the manufacture or processing of a commodity, that the actual net quantity of that commodity in a package will, to a reasonable degree of scientific and statistical certainty, conform to the declared net quantity at the point of retail sale.

(11) “Header label” or “header strip” means a label that is attached across the top of a bag or other container that bears no printed or graphic matter.

(12) “Inch–pound units” means the customary units of weight or measure identified under s. ATCP 90.05.

(13) “Inspection lot” has the meaning given under s. ATCP 90.09 (2) (b).

(14) “Metric units” means the international system of units established in 1960 by the general conference on weights and measures and interpreted or modified for the United States by the United States secretary of commerce. “Metric units” includes the units of weight or measure identified under s. ATCP 90.06.

(15) “Multi–unit package” means a package containing 2 or more component packages of the same commodity, where each component package contains the same quantity of the commodity.

Note: For example, a multi–unit package might contain 6 individually packaged and labeled bars of soap.

(16) “Package” means any container or wrapping in which a consumer commodity is enclosed for purposes of retail sale. “Package” does not include:

(a) An inner wrapping or container that is enclosed within an outer package, unless the inner wrapping or container is designed, labeled or used as a package for the retail sale of a consumer commodity.

Note: For example, where a box (package) of chocolates contains individually wrapped chocolate confections, the inner wrappings do not constitute separate “packages” for labeling purposes under this chapter. However, individually packaged and labeled candy bars do constitute separate “packages” even when sold in multiples as part of a larger “multi–unit” package.

(b) A shipping container or wrapping used solely to transport consumer commodities to a manufacturer, packer, processor, wholesale distributor or retailer, provided that the shipping container or wrapping is not designed or used for the retail sale of any consumer commodity.

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(c) A container used to display consumer commodities or packages at retail, provided that the container is not sold at retail with the consumer commodities or packages.

(d) A container or wrapping in which consumer commodities or packages are placed after a retail customer has viewed and individually selected those commodities or packages for purchase.

(e) An auxiliary container or wrapping enclosing one or more packages, provided that the auxiliary container or wrapping does not obscure any package disclosure required under this chapter.

(f) A shipping container or outer wrapping used by a retailer to ship or deliver a consumer commodity to a retail customer, provided that the shipping container or outer wrapping does not bear any printed matter related to any consumer commodity.

(17) "Person" means an individual, corporation, partnership, association, or other business organization or entity.

(18) "Pesticide" has the meaning given under s. 94.67 (25), Stats.

(19) "Principal display panel" means that part of a package which is most likely to be displayed to or examined by a consumer under normal conditions of retail sale. If a package includes more than one principal display panel, "principal display panel" includes each of those panels. If a package is cylindrical in shape, "principal display panel" means that 40% of the cylinder circumference that is most likely to be displayed or presented to a consumer under normal conditions of sale.

(20) "Random package" means either of the following:

(a) A package that is one of a lot, shipment or delivery of packages of the same consumer commodity, where the packages have no fixed pattern of weights.

(b) Retail packages of cheese which the retailer has cut, weighed, packaged and labeled for sale at retail.

(21) "Retail sale" means the retail sale of a commodity. "Retail sale" includes the retail display, offering or delivery of a commodity for sale to consumers.

(22) "Sell" means to sell at wholesale or retail. "Sell" includes holding for sale, displaying for sale, offering for sale or selling.

(23) "Soft drink" means all beverages commonly known as soft drinks or soda water, whether carbonated, uncarbonated, sweetened or flavored.

(24) "Spot label" means a label, clearly defined by means of a border, indentation or other demarcation, that covers only a portion of a principal display panel that contains no other printed or graphic matter of any kind.

(25) "Weight" means mass expressed in inch-pound units of weight or metric units of mass or both, as provided in this chapter.

(26) "Unreasonable shortage" means a shortage that exceeds the maximum allowable variation specified for a commodity in the national institute of standards and technology handbook 133, "Checking the Net Contents of Packaged Goods."

Note: A copy of the national institute of standards and technology handbook 133, "Checking the Net Contents of Packaged Goods," is on file with the department, the secretary of state and the legislative reference bureau.

History: Cr. Register, March, 1994, No. 459, eff. 4-1-94; CR 02-141: am. (4) Register August 2003 No. 572, eff. 9-1-03.

ATCP 90.02 Declaration of product identity.

(1) **DECLARATION REQUIRED.** No person may sell or distribute a consumer commodity in package form unless each package clearly and conspicuously identifies the commodity contained in that package. The declaration shall identify the commodity by its common or usual name, by its legally required name if any, or by a generic name or other appropriate description that is readily understood by consumers.

(2) **LOCATION AND PROMINENCE.** The declaration of identity under sub. (1) shall appear on the principal display panel of each package, and shall be a principal feature of that display panel. The declaration shall be clearly printed in the English language, in a conspicuous type size and style, and in a color that contrasts to the

color of the background. The declaration shall be generally parallel to the base on which the package is designed to rest when displayed, and shall be positioned so that it can be readily seen and understood by consumers. Hand lettered information, if any, shall be at least as conspicuous and legible as printed information.

(3) **DECEPTIVE DECLARATIONS PROHIBITED.** The declaration of identity under sub. (1) may not be false, deceptive or misleading. Ingredients or components that are not present in the commodity in substantial or significantly effective amounts may not be featured in the declaration of identity.

History: Cr. Register, March, 1994, No. 459, eff. 4-1-94.

ATCP 90.03 Declaration of responsibility. (1) DECLARATION REQUIRED. No person may sell a consumer commodity in package form at any place other than the premises where the commodity was packaged unless each package of the commodity is clearly and conspicuously labeled with all of the following:

(a) *Name of responsible person.* The name of the manufacturer, packer or distributor who is responsible for introducing the consumer commodity into commerce in package form. If the responsible person is a corporation, the label shall specify the actual corporate name of that corporation. If the responsible person is not a corporation, the label shall specify the correct name under which that person does business.

(b) *Business address.* The business address of the responsible person under par. (a). The business address shall include street address, city, state and ZIP code, except that the street address may be omitted if the address can be found under the name of the responsible person in a current city directory or telephone directory. If a person manufactures, packs or distributes a consumer commodity at a place of business other than the person's principal place of business, the label may disclose the address of that principal place of business rather than the actual place of manufacture, packing or distribution, provided that the substitute disclosure is not deceptive or misleading.

(c) *Connection to commodity.* If the responsible person under par. (a) is not the person who manufactured or produced the consumer commodity, the responsible person's name shall be qualified by a phrase, such as "Manufactured for and packed by _____," or "Distributed by _____," that indicates the responsible person's connection to the consumer commodity.

(2) **LOCATION AND PROMINENCE.** The declaration of responsibility under sub. (1) shall be clearly set forth on the package label. The declaration shall be clearly printed in the English language, in a conspicuous type size and style, and in a color that contrasts to the color of the background. The declaration shall be generally parallel to the base on which the package is designed to rest when displayed, and shall be positioned so that it can be readily seen and understood by consumers. Hand lettered information, if any, shall be at least as conspicuous and legible as printed information.

History: Cr. Register, March, 1994, No. 459, eff. 4-1-94.

ATCP 90.04 Declaration of net quantity. (1) DECLARATION REQUIRED. (a) *General.* Except as provided under par. (b), no person may sell or distribute any consumer commodity in package form unless each package of that commodity bears a declaration of net quantity. The declaration of net quantity shall clearly and conspicuously disclose the net quantity of the consumer commodity contained in that package, exclusive of wrappers and other material packaged with the commodity. Except where different net quantity declarations are provided for specific packages or commodities under s. ATCP 90.08, the declaration of net quantity shall comply with this section.

(b) *Exemptions.* Paragraph (a) does not apply to any of the following:

1. A commodity sold by count if the package contains only one unit of that commodity, or a small combination of items that

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are customarily sold together as a single unit and understood by consumers as constituting a single unit.

2. A commodity sold by count if the package contains 6 or fewer units and the number of units can be easily counted by consumers without opening the package.

3. Random packages of a commodity sold at wholesale, for weighing and labeling at the point of retail sale, provided that the random packages are contained in a wholesale container that is labeled to show the combined net weight of the contents of those random packages. This exemption does not apply to a random package when sold at retail.

4. A commodity that is exempt from quantity disclosure, pursuant to an exemption under ch. ATCP 91.

(2) LOCATION AND PROMINENCE. A declaration of net quantity shall appear on the principal display panel of each package, and shall comply with s. ATCP 90.07. The declaration shall be separate from other information contained on the principal display panel, and shall be printed in conspicuous, easily legible and contrasting type.

(3) WEIGHT, MEASURE OR COUNT. In a declaration of net quantity, the net quantity of a consumer commodity shall be expressed in terms of weight, measure or count, as provided under s. 98.06, Stats., and ch. ATCP 91.

Note: With certain exceptions, commodities in liquid form must be sold by liquid measure, and commodities not in liquid form must be sold by weight. Liquid commodities may be sold by weight, and nonliquid commodities may be sold by measure or count, if those forms of measurement are in general use and provide an accurate statement of quantity. Specific requirements and exceptions related to method of sale may be found under s. 98.06, Stats., and ch. ATCP 91.

(4) WEIGHT OR MEASURE; HOW EXPRESSED. If a declaration of net quantity is expressed in terms of weight or measure, the weight or measure shall be expressed in appropriate inch-pound units under s. ATCP 90.05 and in appropriate metric units under s. ATCP 90.06.

(5) COMBINATION DECLARATIONS; REQUIRED. (a) *Weight declaration; combined with measure or count.* If a declaration of net quantity is expressed in terms of weight, the weight declaration shall be combined with an appropriate declaration of measure or count, unless the weight declaration alone is fully informative.

(b) *Declaration of measure; combined with weight or count.* If a declaration of net quantity is expressed in terms of measure, the declaration of measure shall be combined with an appropriate declaration of weight or count, unless the declaration of measure alone is fully informative.

(c) *Declaration of count; combined with weight or measure.* If a declaration of net quantity is expressed in terms of count, the declaration of count shall be combined with an appropriate declaration of weight or measure, unless the declaration of count alone is fully informative.

(d) *Declaration of count; size of counted units.* If a declaration of net quantity includes any declaration of count, either as a primary or supplementary declaration, it shall also specify the size of the individual counted units unless the declaration of count is fully informative without a declaration of unit size.

(e) *Location on package.* Combination declarations required under this subsection shall be included as part of the principal declaration of net quantity on the principal display panel of the package.

(6) SUPPLEMENTARY DECLARATIONS; OPTIONAL. Net quantity declarations required under this section may be supplemented by other declarations of weight, measure or count, provided that the supplementary declarations are not deceptive or misleading. A supplementary declaration of net quantity may not appear on the principal display panel of a package, or in conjunction with the principal declaration of net quantity, unless the supplementary declaration is required or specifically authorized under this chapter to appear in conjunction with the principal declaration.

(7) ABBREVIATIONS. The following quantity abbreviations, or other generally accepted abbreviations, may be used in a declaration of net quantity:

(a)	Avoirdupois	avdp
(b)	Centimeter	cm
(c)	Count	ct
(d)	Cubic	cu
(e)	Cubic centimeter	cm ³
(f)	Cubic decimeter	dm ³
(g)	Cubic meter	m ³
(h)	Diameter	dia
(i)	Drained	dr
(j)	Each	ea
(k)	Foot or feet	ft
(l)	Fluid	fl
(m)	Gallon	gal
(n)	Gram	g
(o)	Inch	in
(p)	Kilogram	kg
(q)	Liquid	liq
(r)	Liter	L or l
(s)	Meter	m
(t)	Micrometer	m
(u)	Milligram	mg
(v)	Milliliter	mL or ml
(w)	Millimeter	mm
(x)	Ounce	oz
(y)	Piece	pe
(z)	Pint	pt
(za)	Pound	lb
(zb)	Quart	qt
(zc)	Square	sq
(zd)	Square decimeter	dm ²
(ze)	Square meter	m ²
(zf)	Square centimeter	cm ²
(zg)	Weight	wt
(zh)	Yard	yd

Note: The above symbols need not be followed by periods or expressed as plurals. For example, "oz" is the symbol for both "ounce" and "ounces." Both upper and lower case letters are acceptable.

History: Cr. Register, March, 1994, No. 459, eff. 4-1-94.

ATCP 90.05 Weight or measure; how expressed in inch-pound units. A net quantity, when expressed in inch-pound units, shall be expressed as follows:

(1) WEIGHT; HOW EXPRESSED IN INCH-POUND UNITS. If a net quantity is declared in terms of weight, the weight shall be expressed in pounds, with any remainder expressed in ounces or common or decimal fractions of a pound. If the declared weight is less than one pound, the declared weight shall be expressed in ounces, with any remainder expressed as a common or decimal fraction of an ounce.

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Note: For example, a declared net weight may be expressed in any of the following forms:

Wt	1 lb 8 oz
Wt	1.5 lb
Wt	1 1/2 lb
Wt	12 oz

Note: The terms "pounds" and "ounces," as used in this subsection, mean avoirdupois pounds and ounces.

(2) LIQUID MEASURE; HOW EXPRESSED IN INCH-POUND UNITS.

(a) *Units of liquid measure.* If a net quantity is declared in terms of liquid measure, the liquid measure shall be expressed in the largest whole units of liquid quarts, quarts and pints, or pints, with any remainder expressed in fluid ounces or common or decimal fractions of the pint or quart. If the declared measure is equal to or greater than one United States gallon of 231 cubic inches, the measure may be expressed in gallons, with any remainder expressed in liquid quarts or in common or decimal fractions of a gallon. If the declared measure is less than one pint, the declared measure shall be expressed in fluid ounces, with any remainder expressed as a common or decimal fraction of a fluid ounce. The declared liquid measure shall be determined at the temperature specified under par. (b).

Note: For example, a liquid measure may be expressed in any of the following ways:

Contents:	1 gal, 2 qt
Contents:	1.5 gal
Contents:	6 qt
Contents:	1 qt, 1 pt
Contents:	1.25 qt
Contents:	1 pt, 8 oz
Contents:	1 1/2 pt
Contents:	1.5 pt
Contents:	8 oz

(b) *Temperature at which liquid measure is determined.* A declared liquid measure under par. (a) shall be determined at 68° F., except that:

1. For petroleum products, the liquid measure shall be determined at 60° F.

2. For commodities normally sold and consumed while frozen, the liquid measure shall be determined at the temperature of the frozen commodity.

3. For commodities normally sold in a refrigerated state, the liquid measure shall be determined at 40° F.

(3) DRY MEASURE; HOW EXPRESSED IN INCH-POUND UNITS. If a net quantity is declared in terms of dry measure, the dry measure shall be expressed in terms of the United States bushel of 2,150.42 cubic inches, or in terms of the peck, dry quart or dry pint subdivisions of the bushel. The declaration shall be expressed in an appropriate fashion to avoid misunderstanding, and to facilitate price comparisons by consumers. Whenever a declaration of dry measure is expressed in terms of a dry pint or dry quart, the term "dry" shall immediately precede the term "pint" or "quart" unless the declaration also includes a reference to bushels or pecks.

(4) CUBIC MEASURE; HOW EXPRESSED IN INCH-POUND UNITS. If a net quantity is declared in terms of cubic measure, the cubic measure shall be expressed in terms of the cubic yard, cubic foot or cubic inch. The declaration shall be expressed in an appropriate fashion to avoid misunderstanding, and to facilitate price comparisons by consumers.

(5) LINEAR MEASURE; HOW EXPRESSED IN INCH-POUND UNITS. If a net quantity is declared in terms of linear measure, the linear measure shall be expressed in terms of the largest whole units of yards, yards and feet, or feet, with any remainder expressed in terms of inches or common or decimal fractions of the yard or foot. If the declared measure is less than one foot, the declared

measure shall be expressed in inches, with any remainder expressed as a common or decimal fraction of an inch.

Note: For example, a linear measure may be expressed in inch-pound units in any of the following ways:

2 yd
1 yd, 1 ft
1 ft, 6 in
1 1/2 ft
1.5 ft
6 in

(6) AREA MEASURE; HOW EXPRESSED IN INCH-POUND UNITS. If a net quantity is declared in terms of area measure, the area measure shall be expressed in terms of the largest whole units of square yards, square feet and square inches, with any remainder expressed in square inches or common or decimal fractions of the square yard or square foot. If the declared measure is less than one square foot, the declared measure shall be expressed in square inches, with any remainder expressed as a common or decimal fraction of a square inch.

(7) SIZE OF BIDIMENSIONAL COMMODITIES; HOW EXPRESSED IN INCH-POUND UNITS. For bidimensional commodities, including roll-type commodities, that are customarily measured in terms of area or in terms of length and width, the net quantity of the commodity shall be expressed as follows:

(a) *Less than one square foot.* If the total area of a bidimensional commodity is less than one square foot, the net quantity shall be declared in terms of length and width. The length and width shall be expressed in linear inches, with any remainder expressed as a common or decimal fraction of a linear inch.

(b) *One to 4 square feet.* Except as provided under par. (d) or (e), if the total area of a bidimensional commodity is less than 4 square feet but not less than one square foot, the net quantity shall be declared in terms of square inches. The square inch declaration shall be followed by a parenthetical declaration of length and width.

(c) *Four square feet or more.* Except as provided under par. (d) or (e), if the total area of a bidimensional commodity is 4 square feet or more, the net quantity shall be declared in terms of square feet, with any remainder expressed in square inches or common or decimal fractions of a square foot. The square foot declaration shall be followed by a parenthetical declaration of length and width.

(d) *Width less than 4 inches.* If a bidimensional commodity is less than 4 inches wide, the net quantity may be declared in terms of length and width, without any declaration of area.

(e) *Two or more individual units; number, size and ply count.*
1. If a package contains 2 or more separate units of a bidimensional commodity, the net quantity of package contents shall be declared in terms of the number of individual units in the package, the number of plies per unit, and the area or dimensions of each unit.

Note: For example, a package of facial tissues must disclose the number of tissues contained in the package, the number of plies per tissue and the size of each tissue ("100 2-ply facial tissues, 8 1/2 inches by 10 inches"), but need not specify the combined area of all the tissues contained in the package.

2. If a roll-type bidimensional commodity, made up of one or more plies, is perforated to create individually usable units that are connected to each other at the time of sale, the declaration of net quantity shall include the total area or dimensions of the roll, the number of individual units contained on the roll, the number of plies per unit, and the area or dimensions of each individual unit. A package containing a perforated roll of bags shall be labeled in compliance with this subdivision, but need not specify the total area or dimensions of the roll.

Note: For example, a packaged roll of paper towels must disclose the total area of the roll, the number of individual paper towels contained on the roll, the number of plies per towel, and the size of each towel.

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ATCP 90.06 Weight or measure; how declared in metric units. A net quantity, when expressed in metric units, shall be expressed as follows:

(1) **WEIGHT; HOW EXPRESSED IN METRIC UNITS.** If a net quantity is declared in terms of weight, the weight shall be expressed in terms of kilograms, grams or milligrams, as follows:

(a) *Less than one kilogram.* If the declared weight is less than one kilogram but not less than one gram, the declared weight shall be expressed in grams, with any remainder expressed as a decimal fraction of a gram. If the declared weight is less than one gram, it shall be expressed in milligrams.

(b) *One kilogram or more.* If the declared weight is one kilogram or more, the declared weight shall be expressed in kilograms, with any remainder expressed as a decimal fraction of a kilogram.

(2) **LIQUID MEASURE; HOW EXPRESSED IN METRIC UNITS.** (a) *General.* If a net quantity is declared in terms of liquid measure, the liquid measure shall be expressed in liters or milliliters. If the declared measure is less than one liter, the declared measure shall be expressed in milliliters. If the declared measure is one liter or more, the declared measure shall be expressed in liters, with any remainder expressed in milliliters.

(b) *Temperature at which liquid measure is determined.* If a net quantity is declared in terms of liquid measure, the declared liquid measure shall be determined at 20° C., except that:

1. For petroleum products, the liquid measure shall be determined at 15° C.

2. For commodities normally sold and consumed while frozen, the liquid measure shall be determined at the temperature of the frozen commodity.

3. For commodities normally sold in a refrigerated state, the liquid measure shall be determined at 4° C.

(3) **VOLUME OTHER THAN LIQUID MEASURE; HOW EXPRESSED IN METRIC UNITS.** If net quantity is declared in terms of volume, the volume shall be expressed in terms of the liter and milliliter, except where use of the cubic meter and cubic centimeter are specifically authorized or required by law.

(4) **LINEAR MEASURE; HOW EXPRESSED.** If net quantity is declared in terms of linear measure, the linear measure shall be expressed in terms of meters, centimeters or millimeters. If the declared measure is less than one meter, it shall be expressed in centimeters or millimeters. If the declared measure is one meter or more, it shall be expressed in meters, with any remainder expressed as a decimal fraction of a meter.

(5) **AREA MEASURE; HOW EXPRESSED.** If net quantity is declared in terms of area measure, the declared measure shall be expressed in terms of square meters, square decimeters or square centimeters. If the declared measure is less than one square meter, it shall be expressed in square decimeters and decimal fractions of a square decimeter, or in square centimeters and decimal fractions of a square centimeter. If the declared measure is one square meter or more, it shall be expressed in square meters and decimal fractions of a meter.

(6) **SIZE OF BIDIMENSIONAL COMMODITIES; HOW EXPRESSED.** For bidimensional commodities, including roll-type commodities, that are measured in terms of area or in terms of length and width, the net quantity of the commodity shall be expressed as follows:

(a) *Less than one square meter.* If the total area of the bidimensional commodity is less than one square meter, the net quantity shall be declared in terms of length and width.

(b) *One square meter or more.* If the total area of the bidimensional commodity is one square meter or more, the declaration of net quantity shall specify the area and the linear dimensions of the commodity. No declaration of area is required if the width of the commodity is 100 millimeters or less, or if the length and width of the commodity are critical for the end use of the commodity.

(c) *Two or more individual units; number, size and ply count.*

1. If a package contains 2 or more separate units of a bidimensional commodity, the net quantity of package contents shall be declared in terms of the number of individual units in the package, the number of plies per unit, and the area or dimensions of each unit.

Note: For example, a package of facial tissues must disclose the number of tissues contained in the package, the number of plies per tissue and the size of each tissue, but need not specify the combined area of all the tissues contained in the package.

2. If a roll-type bidimensional commodity, made up of one or more plies, is perforated to create individually usable units that are connected to each other at the time of sale, the declaration of net quantity shall include the total area or dimensions of the roll, the number of individual units contained on the roll, the number of plies per unit, and the area or dimensions of each individual unit. A package containing a perforated roll of bags shall be labeled in compliance with this subdivision, but need not specify the total area or dimensions of the roll.

Note: For example, a packaged roll of paper towels must disclose the total area of the roll, the number of individual paper towels contained on the roll, the number of plies per towel, and the size of each towel.

History: Cr. Register, March, 1994, No. 459, eff. 4-1-94.

ATCP 90.07 Location and prominence of net quantity declaration. (1) **GENERAL.** A declaration of net quantity under s. ATCP 90.04 shall appear on the principal display panel, and shall comply with this section.

(2) **LOCATION AND POSITION.** (a) *General.* A declaration of net quantity shall appear in the bottom 30% of the principal display panel, except that the declaration may appear elsewhere on the principal display panel if the panel area is 32 cm² (5 in²) or less. The declaration of net quantity shall be generally parallel to the base on which the package is designed to rest when displayed.

(b) *Spot label or header label.* If all of the required declarations under ss. ATCP 90.02 to 90.04 are contained on a spot label or header label, the declaration of net quantity may appear on the lower 30% of the spot label or header label, rather than on the lower 30% of the principal display panel.

(3) **TYPE STYLE.** A declaration of net quantity shall be boldly and clearly printed in a conspicuous type size and style, so that the declaration is conspicuous in relation to other printed or graphic matter on the principal display panel. The declaration may be blown, formed or molded onto a glass or plastic surface if all other printed or graphic matter is likewise blown, formed or molded onto that surface. Hand printed information, if any, shall be at least as conspicuous and legible as other printed information.

(4) **COLOR CONTRAST.** A declaration of net quantity shall be printed in a color that contrasts conspicuously with its background, except that a declaration blown, formed or molded onto a glass or plastic surface need not be in a contrasting color if all other printed or graphic matter is likewise blown, formed or molded onto that surface.

(5) **SEPARATED FROM OTHER INFORMATION.** The area immediately surrounding a declaration of net quantity shall be free of other printed information. The free area shall extend above and below the declaration by a distance equal to not less than the lettering height required for the declaration under sub. (6). The free area shall extend to the left and right of the declaration by a distance equal to at least twice the width of the letter "N" of the style used in the declaration and the size required for the declaration under sub. (6).

(6) **MINIMUM SIZE OF NUMBERS AND LETTERS.** (a) *Minimum height.* In a declaration of net quantity, the height of each number and letter shall be not less than that shown in Table 1, based on the area of the principal display panel determined according to sub. (7). In a common fraction, the numerator and denominator shall each be at least one-half the height required for other numbers under Table 1.

(b) *Minimum width.* In a declaration of net quantity, no number or letter may be more than 3 times as high as it is wide.

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TABLE 1. Minimum Height of Numbers and Letters

Area of principal display panel	Minimum height (general)	Minimum height if blown, formed or molded onto package surface
32 cm ² (5 in ²) or less	1.6 mm (1/16 in)	3.2 mm (1/8 in)
Greater than 32 cm ² (5 in ²) but not greater than 161 cm ² (25 in ²)	3.2 mm (1/8 in)	4.8 mm (3/16 in)
Greater than 161 cm ² (25 in ²) but not greater than 645 cm ² (100 in ²)	4.8 mm (3/16 in)	6.4 mm (1/4 in)
Greater than 645 cm ² (100 in ²) but not greater than 2581 cm ² (400 in ²)	6.4 mm (1/4 in)	7.9 mm (5/16 in)
Greater than 2581 cm ² (400 in ²)	12.7 mm (1/2 in)	14.3 mm (9/16 in)

(7) AREA OF PRINCIPAL DISPLAY PANEL. (a) *General.* For the purpose of determining required minimum type sizes under sub. (6), the square-inch area of the principal display panel shall be determined as follows:

1. For a rectangular package, the area is the height of the principal display panel multiplied by the width of the principal display panel. A rectangular bag is considered a rectangular container under this subdivision even if the bag is not rectangular when filled.

2. For a cylindrical package, the area is 40% of the package height multiplied by the package circumference.

3. If a package, other than a rectangular or cylindrical package, presents a surface constituting an obvious principal display panel, the area of the principal display panel is the area of that surface.

Note: For example, on a triangular package of cheese, the top surface of the package normally constitutes the principal display panel, and the area of that surface is used for the purpose of calculating minimum type sizes under sub. (6).

4. Except as provided under subds. 1. to 3., the area is 40% of the total area of the package surface, including package tops and bottoms, flanges at the tops and bottoms of cans, and the shoulders and necks of bottles or jars.

(b) *Packages with 2 or more principal display panels.* If a package has 2 or more principal display panels, the square inch area of the largest panel shall be used under sub. (6) to determine the required minimum type size for declarations of net quantity on all of the panels. The same type size shall be used for declarations of net quantity on all of the panels.

(c) *Spot labels and header labels.* If a declaration of net quantity appears on a spot label or header label under sub. (2) (b), the required minimum type size under sub. (6) shall be calculated under par. (a) based on the area of the principal display panel, rather than on the area of the spot label or header label.

History: Cr. Register, March, 1994, No. 459, eff. 4-1-94.

ATCP 90.08 Special packages and commodities; labeling requirements. (1) **GENERAL.** This section establishes specific labeling requirements for certain packages and consumer commodities. These requirements apply in addition to, or in lieu of, other labeling requirements under this chapter. Packages and commodities under this section shall comply with all applicable labeling requirements under this chapter, unless this section specifically exempts them from those requirements.

(2) **MULTI-UNIT PACKAGES.** No person may sell or distribute a consumer commodity in package form in a multi-unit package unless both of the following apply:

(a) Each of the component packages in the multi-unit package is labeled in compliance with ss. ATCP 90.02 to 90.04.

(b) The multi-unit package bears a declaration of net quantity that includes all of the following:

1. The number of component packages contained in the multi-unit package.

2. The net quantity of the consumer commodity contained in each component package, declared in compliance with s. ATCP 90.04.

3. The total net contents of the multi-unit package. The total net contents shall be declared in compliance with s. ATCP 90.04.

Note: A container or wrapping which encloses 2 or more individual packages does not constitute a "package" or "multi-unit package" if it qualifies under any of the exemptions under s. ATCP 90.01 (16) (a) to (f).

(3) **COMBINATION PACKAGES.** If dissimilar consumer commodities are sold together in a single package, the package shall bear a separate declaration of net quantity for each different commodity, except that no declaration is required for exempt commodities under s. ATCP 90.04 (1) (b). The net quantity declaration on a combination package need not comply with the location requirement under s. ATCP 90.07 (2), the free area requirement under s. ATCP 90.07 (5) or the minimum height requirements under s. ATCP 90.07 (6) (a).

Note: Sewing kits, upholstery kits and antiques kits are examples of combination packages under this subsection. A container or wrapping does not constitute a "package" or "combination package" if it qualifies under any of the exemptions under s. ATCP 90.01 (16) (a) to (f).

(4) **VARIETY PACKAGES.** If a package contains 2 or more units of reasonably similar commodities, the package shall bear a declaration of the combined net quantity of the commodities contained in the package, except that no declaration is required for exempt commodities under s. ATCP 90.04 (1) (b). The net quantity declaration on a variety package need not comply with the location requirement under s. ATCP 90.07 (2), the free area requirement under s. ATCP 90.07 (5) and the minimum height requirements under s. ATCP 90.07 (6) (a).

Note: Examples of variety packages under this subsection include seasonal gift packages of cheese and variety packages of cereal. A container or wrapping does not constitute a "package" or "variety package" if it qualifies under any of the exemptions under s. ATCP 90.01 (16) (a) to (f).

(5) **RANDOM PACKAGES.** A random package need not comply with s. ATCP 90.04 (4), or with s. ATCP 90.07 (2), (5) or (6), provided that the random package complies with both of the following requirements:

(a) The package bears a label which conspicuously declares the net weight of the package contents, expressed in inch-pound units under s. ATCP 90.05 (1) or metric units under s. ATCP 90.06 (1).

(b) When it is offered or exposed for sale at retail, the package label conspicuously discloses the price per kilogram or pound, and the total price of the package contents.

(6) **AEROSOL AND SIMILAR PRESSURIZED PACKAGES.** If a consumer commodity is contained in an aerosol or similar pressurized package, the net quantity of the consumer commodity shall be declared in terms of weight. The declared net weight shall include the net weight of any propellant that will be expelled when the commodity is released according to instructions shown on the package.

(7) **COMMODITIES LABELED ACCORDING TO FEDERAL OR STATE LAW.** Packages of meat and meat products, poultry products, tobacco products, pesticides, and alcohol beverages are exempt from the location and minimum size requirements under s. ATCP 90.07 (2) and (6), provided that the packages are labeled in compliance with federal labeling requirements applicable to those commodities.

(8) **PACKAGES OF CONTAINER-TYPE COMMODITIES.** (a) *General.* If container-type consumer commodities such as bags, cups, dishes, boxes or pans, are sold in package form, the declaration of net quantity shall comply with this subsection.

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(b) *Bags*. 1. If bag-type consumer commodities are sold in package form, the net quantity of bags contained in each package shall be declared in terms of count. The count declaration shall be followed by a declaration showing the linear dimensions of the individual bags, as provided under subd. 2. The linear dimensions shall be expressed in metric units under subd. 3. and in inch-pound units under subd. 4. If bags are sold by capacity, the capacity of the bags shall be declared according to par. (f).

2. If the bags in a package are gusseted, the declaration of bag dimensions under subd. 1. shall include the length, width and depth of the individual bags. If the bags are not gusseted, the declaration shall include the length and width of the individual bags.

3. When bag dimensions are expressed in metric units, the dimensions shall be expressed in millimeters except that a dimension of one meter or more shall be expressed in meters with any remainder expressed as a decimal fraction of a meter.

4. When bag dimensions are expressed in inch-pound units, the dimensions shall be expressed in inches except that any dimension of more than 2 feet shall be expressed in feet with any remainder expressed in inches or as a common or decimal fraction of a foot.

Note: See also ss. ATCP 90.05 (7) (e) and 90.06 (6) (c).

(c) *Angular or oblong containers*. For square, rectangular, oblong or similar containers, the net quantity shall be declared in terms of count, followed by the length, width and depth of the individual containers, except that depth need not be included if less than 50 millimeters or 2 inches.

(d) *Circular containers*. For circular or other generally round-shaped containers, except cups, the net quantity shall be declared in terms of count, followed by diameter and depth, except that depth need not be included if less than 50 millimeters or 2 inches.

(e) *Cups*. The net quantity of cups or cup-like containers shall be declared in terms of count and liquid capacity per cup.

(f) *Capacity*. If a package of container-type consumer products includes any reference to the capacity of those containers, the capacity of the containers shall be included in the declaration of net quantity. The capacity shall be expressed in metric units of volume. The capacity shall also be expressed in inch-pound units as follows:

1. In inch-pound units of liquid measure if the containers are designed to contain liquids, semisolids, viscous materials, or mixtures of solids and liquids.

2. In inch-pound units of dry measure if the containers are designed to contain solids.

3. If the containers are used as liners for other more permanent containers, in the same inch-pound units normally used to express the capacity of the more permanent containers.

(9) WEARING APPAREL. Packaged wearing apparel, including non-textile apparel and accessories such as leather goods and footwear, need not be labeled with a net quantity declaration under s. ATCP 90.04 if the package contains only one item of apparel, or if the package contains a single pair of items, such as gloves or shoes, that are normally sold in pairs.

(10) TEXTILES AND RELATED PRODUCTS. A declaration of quantity for the following textile products need not comply with s. ATCP 90.04 (4), 90.05 (7) or 90.06 (6), provided that the declaration of quantity complies with the following requirements:

(a) *Bedsheets and mattress covers*. The declaration of quantity for rectangular bedsheets or mattress covers shall include all of the following:

1. The length and width, in centimeters or inches, of the mattress for which the item is designed. In the case of a flat bedsheet, this declaration shall be followed by a parenthetical declaration, in centimeters or inches, of the length and width of the finished sheet.

2. The size category of the mattress for which the item is designed, if the mattress falls into the "twin," "double," "queen," "king" or "California king" size category.

(b) *Pillowcases*. The declaration of quantity for rectangular pillowcases shall include all of the following:

1. The length and width, in centimeters or inches, of the pillow for which the pillowcase is designed. This shall be followed by a parenthetical declaration, in centimeters or inches, of the length and width of the finished pillowcase.

2. The size category of the pillow for which the pillowcase is designed, if the pillow falls into a standard size category such as "youth," "standard" or "queen."

(c) *Blankets and related items*. The declaration of quantity for rectangular blankets, comforters, quilts, bedspreads, mattress pads, afghans, throws and related items shall include both of the following:

1. The length and width of the finished item, in centimeters or inches.

2. The size category of the mattress for which the item is designed, if the item is designed for a mattress that falls into the "twin," "double," "queen," "king" or "California king" size category.

(d) *Tablecloths and napkins*. The declaration of quantity for rectangular tablecloths, napkins and related items shall state, in centimeters or inches, the length and width of each finished item. The declaration may also include a parenthetical statement, in centimeters or inches, of the item's length and width before hemming.

(e) *Draperies and related items*. The declaration of quantity for rectangular curtains, drapes, flags, furniture scarfs and related items shall state, in centimeters or inches, the length and width of each finished item. The quantity statement may also state parenthetically, in centimeters or inches, the length of any ornamentation.

(f) *Carpets and rugs*. The declaration of quantity for rectangular carpets and rugs shall state the length and width of the item in meters or feet. If the declaration is stated in meters, any remainder shall be expressed in decimal fractions of the meter. If the declaration is stated in feet, any remainder shall be expressed in common or decimal fractions of the foot or in inches. The declaration of quantity may also state parenthetically, in centimeters or inches, the length of any ornamentation.

(g) *Towels and related items*. The declaration of quantity for rectangular dish towels, dish cloths, bath towels, face cloths, utility cloths, bath mats and related items shall state, in centimeters or inches, the length and width of the item if the item is woven. If the item is knitted, its dimensions need not be stated.

(h) *Nonrectangular and irregular items*. 1. The declaration of quantity for textile products such as potholders, fixture and appliance covers, slip covers and nonrectangular diapers shall be stated in terms of count and may include size designations and dimensions.

2. The declaration of quantity for nonrectangular textile products of the types identified under pars. (a) to (g) shall state the geometric shape of the product and the dimensions that are customarily used in describing that geometric shape. Dimensions may be stated in metric or inch-pound units corresponding to those specified under pars. (a) to (g).

3. If textile product remnants of assorted sizes are sold by count, the declaration of quantity shall include the term "irregular dimensions" and shall specify the minimum size of the remnants.

(11) THREADS AND YARNS. Notwithstanding ss. ATCP 90.04 (4), 90.05 (7) and 90.06 (6), the declaration of net quantity for sewing thread, handcraft thread and yarn shall comply with the following requirements:

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(a) The net quantity of nonindustrial sewing or handcraft thread shall be expressed in terms of yards.

(b) The net quantity of yarn shall be expressed in terms of inch-pound units of weight.

(12) PACKAGED SEED. (a) *Declaration of quantity; location on small packages.* Notwithstanding s. ATCP 90.07 (2), the declaration of net quantity on a package of seed intended for planting shall appear in the upper 30% of the principal display panel if the net weight of package contents is 7 grams (1/4 ounce) or less.

(b) *Net quantity; how declared.* The declaration of net quantity on a package of seed intended for planting shall comply with the following requirements:

1. The net quantity of seed shall be expressed in terms of weight, except that the net quantity of coated seed, encapsulated seed, pelletized seed, and seeds contained in preplanters and seed tapes shall be declared in terms of count.

2. Notwithstanding s. ATCP 90.04 (4), if the net weight of the package contents is 7 grams or less, the net weight shall be expressed in metric units according to s. ATCP 90.06 (1), but need not be expressed in inch-pound units.

3. Notwithstanding s. ATCP 90.04 (4), if the net weight of package contents is more than 7 grams, but not more than 225 grams (8 oz.), the net weight may be expressed either in metric units under s. ATCP 90.06 (1) or inch-pound units under s. ATCP 90.05 (1), or both.

(13) FOOD AND TOBACCO PRODUCTS; SMALL ITEMS. (a) *Small confections.* Individually wrapped candies or confectionery items having a net weight of less than 15 grams (1/2 oz.) per item are exempt from the package labeling requirements under this chapter, provided that the secondary package or container in which the individual wrapped items are sold or shipped complies with this chapter.

(b) *Small packages of meat or meat products.* Individually wrapped and labeled packages of meat or meat products which have a net weight of less than 15 grams (1/2 oz.), and which are contained in a shipping container, need not bear a declaration of net quantity if the shipping container bears a declaration of net quantity that complies with s. ATCP 90.04.

(c) *Small individual food servings.* Individual serving size packages of food which contain less than 15 grams (1/2 oz.) net weight or less than 15 ml. (1/2 fl. oz.) net liquid measure of food for use in restaurants, institutions or passenger carriers, and which are not intended for sale at retail, need not comply with s. ATCP 90.04.

(d) *Tobacco products.* 1. Individually wrapped cigars, and individually wrapped cuts, plugs or twists of tobacco, are exempt from the package labeling requirements under this chapter, provided that the secondary package or container in which the individual wrapped items are sold or shipped complies with this chapter.

2. A carton of cigarettes or small cigars, containing ten individual packages of twenty cigarettes or small cigars, is exempt from the multi-unit package requirements under sub. (2), and from the location and minimum size requirements under s. ATCP 90.07 (2) and (6), provided that the individual component packages are labeled in compliance with this chapter and the carton bears a declaration under s. ATCP 90.04 stating the net contents of the carton.

(14) MILK, DAIRY PRODUCTS, BUTTER AND MARGARINE. (a) *Milk, fluid milk products, ice cream and frozen desserts.* 1. Notwithstanding s. ATCP 90.05 (2) (a), if fluid milk, fluid milk products, ice cream or frozen desserts are measured by and packaged in 1/2 pint or 1/2 gallon containers, the net contents may be stated as 1/2 pint or 1/2 gallon, respectively.

2. If fluid milk, fluid milk products, ice cream or frozen desserts are measured by and packaged in measure containers as defined in the "Measure Container Code" of the national institute

of standards and technology handbook 44, the net quantity declaration need not comply with the location requirement under s. ATCP 90.07 (2).

Note: The "Measure Container Code" of the national institute of standards and technology handbook 44 is on file with the department, the secretary of state and the legislative reference bureau.

3. If milk or fluid milk products are measured by and packaged in glass or plastic containers of 1/2, one pint, one quart, 1/2 gallon or one gallon capacities, the net quantity declaration need not comply with the location requirement under s. ATCP 90.07 (2), provided that other required label information is conspicuously displayed on the cap or outside closure and the net quantity 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.

(b) *Butter.* Notwithstanding ss. ATCP 90.02 (2) and 90.07 (2), if butter is packaged in 4-ounce, 8-ounce or one-pound packages with continuous label copy wrapping, the declaration of identity and the net quantity declaration need not be parallel to the base of the package. If butter is packaged in 8-ounce or one-pound packages, the declaration of quantity need not comply with the location requirements under s. ATCP 90.07 (2).

(c) *Margarine and butter substitutes.* If margarine or butter substitutes are packaged in a one-pound rectangular packages, the net quantity declaration need not comply with the location requirements under s. ATCP 90.07 (2). This exemption does not apply to whipped or soft products, or to packages containing more than 4 sticks of margarine or butter substitute.

(15) FRUIT JUICE, BOTTLED WATER AND SOFT DRINKS. (a) *Net quantity; how expressed.* Notwithstanding s. ATCP 90.05 (2) (a), if fruit juice, imitation fruit juice, bottled water or a soft drink is packaged in a 1/2 pint or 1/2 gallon quantity, the net contents may be stated as 1/2 pint or 1/2 gallon, respectively.

(b) *Net quantity declaration; location.* If fruit juice, imitation fruit juice, bottled water or a soft drink is packaged in glass or plastic containers in quantities of 1/2 pint, one pint, one quart, 1/2 gallon or one gallon, the net quantity declaration need not comply with the location requirement under s. ATCP 90.07 (2), provided that other required label information is conspicuously displayed on the cap or outside closure and the net quantity declaration is conspicuously blown, formed, molded into the container, or permanently applied to the container, at or above the shoulder of the container.

(c) *Declaration of product identity; soft drinks and bottled water.* On a bottle of soft drink or bottled water, the declaration of product identity need not comply with the location requirement under s. ATCP 90.02 (2), provided that the declaration appears on the bottle closure.

(d) *Multi-unit packages of soft drink or bottled water.* Multi-unit packages of soft drink or bottled water need not bear a declaration of product identity under s. ATCP 90.02 or a declaration of responsibility under s. ATCP 90.03, provided that the individual soft drink containers in the multi-unit package comply with ss. ATCP 90.02 and 90.03.

(16) FLOUR AND EGGS. (a) *Wheat flour.* If wheat flour is packaged in units of 2, 5, 10, 25, 50 or 100 pounds, the net quantity declaration need not comply with the location requirement under s. ATCP 90.07 (2).

(b) *Corn flour and corn meal.* If corn flour or corn meal is packaged in units of 5, 10, 25, 50 or 100 pounds, the net quantity declaration need not comply with the location requirement under s. ATCP 90.07 (2).

(c) *Eggs.* The net quantity declaration on a carton of 12 eggs need not comply with the location requirement under s. ATCP 90.07 (2). If an egg carton is designed so that the retail purchaser can divide the carton in half, each half is exempt from the labeling requirements under this chapter, provided that the whole carton complies with this chapter.

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(17) COSMETICS IN DECORATIVE CONTAINERS. If cosmetics are packaged in “boudoir–type” containers, including decorative containers of the “cartridge,” “pillbox,” “compact,” or “pencil” variety, or containers with a capacity of 7 grams (1/4 oz.) or less, labeling required under this chapter to appear on the principal display panel may appear on a tear–away tag or tape affixed to the container.

(18) FILM AND RECORDING MEDIA. The net quantity declaration on packages of film, recording tape or other image and audio media packaged and labeled for retail sale need not be expressed according to s. ATCP 90.05 or 90.06, provided that the net quantity declaration complies with the following applicable requirements:

(a) *Unexposed or unrecorded media.* 1. For unexposed still film, still tape or other still image media, the net quantity shall be expressed in terms of the guaranteed number of available still image exposures included in the package. The net quantity declaration may also state the length and width measurements of the individual exposures, expressed in millimeters or inches.

2. For unexposed bulk or movie film, the net quantity shall be expressed in terms of the guaranteed length of film, in meters or feet, that is available for exposure.

3. For unexposed electronic recording media, the net quantity shall be expressed in terms of the guaranteed length of available recording time. The net quantity declaration shall disclose, in connection with the available recording time, the applicable recording speeds, playing speeds and machine settings as necessary. The declaration may also state the linear measure of the recording medium.

(b) *Exposed, recorded or processed media.* 1. For exposed or processed still image media, the net quantity shall be expressed in terms of the number of still images included in the package. The net quantity declaration may also state the length and width measurements of the individual exposures, expressed in millimeters or inches.

2. For exposed or processed film or recording media, other than still image media, the net quantity shall be expressed in terms of the entertainment time included in the package. Entertainment time means the time beginning with the first frame of sound or picture, whichever comes first after any countdown sequence, and ending with the last frame of credits, the last frame of the phrase “the end,” or the end of sound, whichever occurs last.

(19) TINT–BASED PAINT. The net quantity declaration on containers of tint base paint shall specify the net quantity prior to the addition of colorant at retail, except that a declared net quantity of one quart or one gallon may include colorant selected by the purchaser and added at retail if all of the following conditions are met:

(a) The system employed by the responsible manufacturer, packer or distributor ensures that the retail purchaser always obtains a quart or a gallon after colorant is added.

(b) The net quantity declaration on the principal display panel includes a statement indicating that the tint base paint is not to be sold without the addition of colorant.

(c) The container label states, in fluid ounces, the net quantity of tint base paint included in the container prior to the addition of colorant at retail.

(20) MOTOR OIL IN CANS. If motor oil is packaged in cans, the society of automotive engineers (SAE) viscosity number need not appear on the principal display panel, provided that all of the following conditions are met:

(a) The principal display panel appears on the body of the motor oil can.

(b) The SAE viscosity number appears on the can lid and is expressed in letters and numerals in type size of at least 6 mm or 1/4 inch.

(21) LIQUEFIED PETROLEUM GAS IN PORTABLE REFILLABLE CONTAINERS. No person may sell or exchange at retail, or offer for sale or exchange at retail, liquefied petroleum gas in a portable refillable container unless all of the following apply:

(a) The tare weight of the container is clearly and conspicuously disclosed on the container, as required under s. 98.245 (2), Stats.

(b) The net quantity of liquefied petroleum gas in the container is clearly and conspicuously disclosed on the container, or on a tag attached to the container. The format of the declaration shall comply with s. ATCP 90.04.

(c) A declaration of responsibility is attached to the container, or conspicuously posted at the location where the liquefied petroleum gas is offered or displayed for sale or exchange. The declaration shall comply with s. ATCP 90.03, except as provided in this paragraph.

Note: See also s. 98.245, Stats., and s. ATCP 92.05.

History: Cr. Register, March, 1994, No. 459, eff. 4–1–94; cr. (21), Register, June, 1998, No. 510, eff. 7–1–98.

ATCP 90.09 Variations from declared net quantity.

(1) INDIVIDUAL PACKAGE. (a) Except as provided under par. (b), no person may sell any commodity in a package containing a net quantity of that commodity which is less than the net quantity declared on the package label.

(b) A shortage in an individual package does not violate par. (a) if both of the following apply:

1. The shortage is a result of unavoidable variations in quantity that occur despite good packaging and distribution practices.

2. The shortage is not an unreasonable shortage.

(c) If a shortage is found in a package that is part of an enforcement sample that violates sub. (3) (a), it is rebuttably presumed that the shortage in that individual package does not qualify for exemption under par. (b).

(d) A seller who violates par. (a) is subject to enforcement action under s. 98.26 (1) (c), Stats.

(2) ENFORCEMENT SAMPLE AND INSPECTION LOT. (a) The department or a municipal sealer may determine the net contents of packaged commodities in an inspection lot based on an enforcement sample collected from that inspection lot. The enforcement sample shall be collected, tested and analyzed according to applicable provisions of the national institute of standards and technology handbook 133, “Checking the Net Contents of Packaged Goods.” Unless otherwise specified by handbook 133, the inspection lot shall be determined according to par. (b).

(b) The department or municipal sealer shall determine the scope of an inspection lot before collecting an enforcement sample from that lot under par. (a). An inspection lot may consist of any group of identically labeled packages found at the same manufacturing, wholesale or retail premises. An inspection lot may include packages from different manufacturing or production lots, and from different wholesale shipments or deliveries.

(c) For purposes of par. (b), packages are identically labeled if they are of the same size and if they bear the same declaration of product identity under s. ATCP 90.02, the same declaration of responsibility under s. ATCP 90.03, and the same declaration of net quantity under s. ATCP 90.04, regardless of any other differences in label content or format.

Note: A copy of the national institute of standards and technology handbook 133, “Checking the Net Contents of Packaged Goods,” is on file with the department, the secretary of state, and the legislative reference bureau.

(3) ENFORCEMENT SAMPLE TESTS SHORT; ORDER PROHIBITING SALE OF INSPECTION LOT. (a) In any enforcement sample under sub. (2) (a), the average net quantity per package may not be less than the net quantity declared on the package label.

(b) If an enforcement sample violates par. (a), the department or a municipal sealer may issue an order prohibiting the sale of the

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entire inspection lot from which that enforcement sample was collected.

(4) UNREASONABLE SHORTAGES; ORDER PROHIBITING SALE. (a) If, in any enforcement sample under sub. (2) (a), the number of unreasonable shortages in individual packages exceeds the number specified for an enforcement sample of that size in the national institute of standards and technology handbook 133, the department or a municipal sealer shall issue an order prohibiting the sale of the entire inspection lot from which that enforcement sample is collected.

(b) The department or a municipal sealer may prohibit the sale of any individual package having an unreasonable shortage, regardless of whether that package is part of an enforcement sample under sub. (2) (a).

History: Cr. Register, March, 1994, No. 459, eff. 4-1-94; r. and recr. (2), am. (4) (a), Register, June, 1998, No. 510, eff. 7-1-98.

ATCP 90.10 Nutritional labeling of food. (1) Except for meat and poultry products under sub. (2), food sold or distributed for sale in this state shall be labeled in compliance with applicable rules adopted by the United States food and drug administration under 21 CFR 101, 102, 104, 105 and 130.

(2) Meat and poultry products sold or distributed for sale in this state shall be labeled in compliance with applicable rules adopted by the United States department of agriculture under 9 CFR 317.300 to 317.400, 320.1, 381.175, and 381.400 to 381.500.

Note: This section is adopted under s. 97.09 (4), Stats. See also s. 97.09 (1), Stats., related to food definitions and standards of identity, composition, quality and fill of container.

Note: Section ATCP 90.10 takes effect on April 1, 1994 or on the effective date of the federal rule incorporated by reference, whichever occurs later.

History: Cr. Register, March, 1994, No. 459, eff. 4-1-94.