

Storage

PACKAGING AND LABELING LEGISLATION

HEARINGS

BEFORE THE

PT. 3 SUBCOMMITTEE ON ANTITRUST AND MONOPOLY

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

PURSUANT TO

S. Res. 56

ON

S. 387

TO AMEND THE CLAYTON ACT TO PROHIBIT RESTRAINTS OF
TRADE CARRIED INTO EFFECT THROUGH THE USE OF UNFAIR
AND DECEPTIVE METHODS OF PACKAGING OR LABELING
CERTAIN CONSUMER COMMODITIES DISTRIBUTED IN COM-
MERCE, AND FOR OTHER PURPOSES

PART 3 APPENDIX



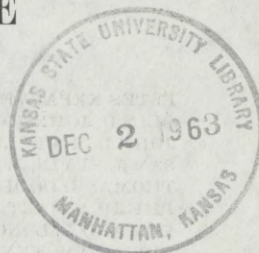
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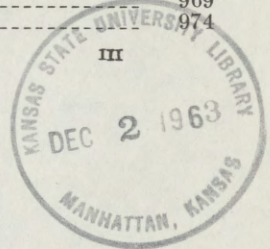
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INTRODUCTION

During the course of the packaging and labeling investigation, certain practices were brought to the attention of the subcommittee which it was claimed made rational shopping a difficult, if not impossible, task. They were:

1. Obscure net weight designations.
2. Oversized packages.
3. Multiple package sizes.
4. Packaging to price, particularly where a drop in contents is made without changing the package size or is accompanied by a "new and improved" promotion in a redesigned container which gives the appearance of being greater in size than the old container although the contents are less.
5. Odd size packaging, particularly the use of fractions, making it difficult to make price comparisons.
6. Packaging in misleading sizes and shapes.
7. Use of misleading art on packages.
8. Misrepresenting package contents on the label.
9. Misuse of "cents-off" promotions.
10. Misleading quantity terminology such as "jumbo half quart," "super giant," "king size," and "economy size."

Questions were also raised by subcommittee members concerning comparative statutes on a State, Federal, and foreign level touching on the subject matter of the inquiry.

Therefore, the Library of Congress was asked to prepare a study in the following areas:

- I. Federal laws and regulations.
- II. State laws, with particular emphasis on the practices complained of as set forth above.
- III. Special World War II regulations pertaining to containers.
- IV. Selected foreign jurisdictions.

The material prepared by the Library of Congress composes the subject matter of this appendix.

INTRODUCTION

During the course of the foregoing and reading of the foregoing, it is not possible to find a satisfactory answer to the question: "What is the purpose of this book?"

The purpose of this book is to provide a comprehensive and systematic treatment of the subject of the history of the United States, from the discovery of the continent to the present time. It is intended to be a guide for the student and the general reader alike, and to be a source of information for the teacher and the researcher.

The book is divided into two main parts. The first part, which is the larger, is devoted to the history of the United States from the discovery of the continent to the present time. The second part, which is the smaller, is devoted to the history of the United States from the present time to the future. The first part is divided into three main sections: the discovery of the continent, the settlement of the continent, and the development of the United States. The second part is divided into two main sections: the history of the United States from the present time to the future, and the history of the United States from the future to the present time.

The book is written in a clear and concise style, and is intended to be a guide for the student and the general reader alike. It is intended to be a source of information for the teacher and the researcher. The book is written in a clear and concise style, and is intended to be a guide for the student and the general reader alike. It is intended to be a source of information for the teacher and the researcher.

PACKAGING AND LABELING LEGISLATION

APPENDIX

I

FEDERAL LAWS AND REGULATIONS

Numerous laws and regulations are concerned with some aspect of marking, grading, tagging, labeling, packaging, etc., of food and other commodities, not all of which seem relevant to this study. Many of these laws are more concerned with such factors as quality, health, or safety than with quantity. However, we have listed below under the agency having jurisdiction the major laws dealing with packaging, labeling, standards, etc.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

FOOD AND DRUG ADMINISTRATION

1. Federal Food, Drug and Cosmetics Act (52 Stat. 1040, 21 U.S.C. sec. 301, et seq.).

The purposes of the act, generally speaking, are embodied in its title, which is expressed as "An Act to prohibit the movement in interstate commerce of adulterated and misbranded food, drugs, devices, and cosmetics, and for other purposes."

The provisions of this act relating to food, and pertinent to this study, we believe, are those (1) defining certain terms, i.e., "label," and "labeling," (2) conferring authority on the Secretary of Health, Education, and Welfare to promulgate regulations fixing reasonable standards of fill of container, and (3) prescribing conditions under which a food shall be deemed to be misbranded. The text of pertinent provisions as codified in title 21, United States Code, are as follows:

Sec. 321. Definitions; generally

For the purposes of this chapter—

* * * * *

(k) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(1) The term "immediate container" does not include package liners.

(m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

(n) If an article is alleged to be misbranded because the labeling is misleading, then in determining whatever the labeling is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling thereof or under such conditions of use as are customary or usual.

Sec. 341. Definitions and standards for food.

Whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable standard of quality, and/or reasonable standards of fill of container: * * * In prescribing any standard of fill of container, the Secretary shall give due consideration to the natural shrinkage in storage and in transit of fresh natural food and to need for the necessary packing and protective material.

Sec. 343. Misbranded food.

A food shall be deemed to misbranded * * *

(a) False or misleading label.

If its labeling is false or misleading in any particular.

* * * * *

(d) Misleading container.

If its container is so made, formed, or filled as to be misleading.

(e) Package form.

If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, That under clause (2) of this sub-section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary.

(f) Prominence of information on label.

If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

* * * * *

(h) Representation as to standards of quality and fill of container.

If it purports to be or is represented as * * *

(2) a food for which a standard or standards of fill of container have been prescribed by regulations as provided by section 341 of this title, and it falls below the standard of fill of container applicable thereto, unless its label bears in such manner and form as such regulations specify, a statement that it falls below such standard.

Regulations of the Food, Drug and Cosmetic Act are codified in title 21 of the Code of Federal Regulations. Those provisions that seem relevant are as follows:

Sec. 1.8. Food; labeling; required statements when exempt.

* * * * *

(3)(1) The statement of the quantity of the contents shall reveal the quantity of food in the package, exclusive of wrappers and other material packed with such food.

(2) The statement shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight of measure, which are generally used by consumers to express quantity of such food and which give accurate information as to the quantity thereof. But if no general consumer usage in expressing accurate information as to the quantity of such food exists, the statement shall be in terms of liquid measure if the food is liquid, or in terms of weight if the food is solid, semi-solid, viscous, or a mixture of solid

and liquid; except that such statement may be in terms of dry measure if the food is a fresh fruit, fresh vegetable, or other dry commodity.

(f) (1) A statement of weight shall be in terms of the avoirdupois pound and ounce. A statement of liquid measure shall be in terms of the United States gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof, and except in case of frozen food which is so consumed, shall express the volume at 68 degrees Fahrenheit (20 degrees Centigrade). A statement of dry measure shall be in terms of the United States bushel of 2150.42 cubic inches and peck, dry quart, and dry pint subdivisions thereof; or in terms of the United States standard barrel and its subdivisions of third, half, and three-quarters barrel. However, in the case of an export shipment, the statement may be in terms of a system of weight or measure in common use in the country to which such shipment is exported.

(2) A statement of weight or measure in the terms specified in subparagraph (1) of this paragraph may be supplemented by a statement in terms of the metric system of weight or measure.

(3) Unless an unqualified statement of numerical count gives accurate information as to the quantity of food in the package, it shall be supplemented by such statement of weight, measure, or size of the individual units of the foods as will give such information.

(g) Statements shall contain only such fractions as are generally used in expressing the quantity of the food. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than two places.

(h) (1) If the quantity of food in the package equals or exceeds the smallest unit of weight or measure which is specified in paragraph (f) of this section and which is applicable to such food under the provisions of paragraph (e) (2) of the section, the statement shall express the number of the largest of such units contained in the package (for example, the statement on the label of a package which contains one quart of a food shall be "1 quart" and not "2 pints" or "32 fluid ounces"), unless the statement is made in accordance with the provisions of subparagraph (2) of this paragraph. Where such number is a whole number and a fraction, there may be substituted for the fraction its equivalent in smaller units, if any smaller is specified in such paragraph (f) for examples, $1\frac{3}{4}$ quarts may be expressed as "1 quart $1\frac{1}{2}$ pints" or "1 quart 1 pint 8 fluid ounces"; $1\frac{1}{4}$ pounds may be expressed as "1 pound 4 ounces"). The stated number of any unit which is smaller than the largest unit (specified in such paragraph (f) contained in the package shall not equal or exceed the number of such smaller units in the next larger unit so specified (for example, instead of "1 quart 16 fluid ounces" the statement shall be " $1\frac{1}{2}$ quarts" or "1 quart 1 pint"; instead of "24 ounces" the statement shall be " $1\frac{1}{2}$ pounds" or "1 pound 8 ounces").

(2) In the case of a food with respect to which there exists an established custom of stating the quantity of the contents as a fraction of a unit, which unit is larger than the quantity contained in the package, or as units smaller than the largest unit contained therein, the statement may be made in accordance with such custom if it is informative to consumers.

(i) The statement shall express the minimum quantity, or the average quantity, of the content of the packages. If the statement is not so qualified as to show definitely that the quantity expressed is the minimum quantity, the statement shall be considered to express the average quantity.

(j) Where the statement expresses the minimum quantity, no variation below the stated minimum shall be permitted except variations below the stated weight or measure caused by ordinary and customary exposure, after the food is introduced into interstate commerce to conditions which normally occur in good distribution practice and which unavoidably results in decreased weight or measure. Variations above the stated minimum shall not be unreasonably large.

(k) Where the statement does not express the minimum quantity:

(1) Variations from the stated weight or measure shall be permitted when caused by ordinary and customary exposure, after the food is introduced into interstate commerce, to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or measure;

(2) Variations from the stated weight, measure, or numerical count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting individual packages which occur in good packing prac-

tice. But under subparagraph (2) of this paragraph variations shall not be permitted to such extent that the average of the quantities in the packages comprising a shipment or other delivery of the food is below the quantity stated, and no unreasonable shortage in any package shall be permitted, even though averages in other packages in the same shipment or delivery compensate for such shortage.

(1) The extent of variations from the stated quantity of the contents permissible under paragraphs (j) and (k) of this section in the case of each shipment or other delivery shall be determined by the facts in such case.

(m) A food shall be exempt from compliance with the requirements of clause

(2) of section 403(e) of the act if:

(1) The quantity of the contents, as expressed in terms applicable to such food under the provisions of paragraph (e)(2) of this section, is less than one-half ounce avoirdupois, or less than one-half fluid ounce, or (in case the units of the food can be easily counted without opening the package) less than six units; or

(2) The statement of the quantity of the contents of the package, together with all other words, statements, and information required by or under authority of the act to appear on the label, cannot because of insufficient label space, be so placed on the label as to comply with the requirements of section 403(f) of the act and regulations promulgated thereunder.

(n) A food shall be exempt while held for sale from the requirements of clause (2) of section 403(e) of the act (requiring a statement on the label of the quantity of contents) if said food, having been received in bulk containers at a retail establishment, is accurately weighed, measured, or counted either within the view of the purchaser or in compliance with the purchaser's order. (Sec. 403, 52 Stat. 1047, as amended; 21 U.S.C. 343.)

Sec. 1.0. Food; labeling; prominence of required statements.

(a) A word, statement, or other information required by or under authority of the act to appear on the label may lack that prominence and conspicuousness required by section 403(f) of the act by reason (among other reasons) of:

(1) The failure of such word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;

(2) The failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be, under customary conditions of purchase, the part or panel displayed;

(3) The failure of the label to extend over the area of the container or package available for such extension, so as to provide sufficient label space for the prominent placing of such word, statement, or information;

(4) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space for any word, statement, design, or device which is not required by or under authority of the act to appear on the label;

(5) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space to give materially greater conspicuousness to any other word, statement, or information, or to any design or device; or

(6) Smallness or style of type in which such words, statement, or information appears, insufficient background contrast, obscuring designs or vignettes or crowding with other written, printed, or graphic matter.

(b) No exemption depending on insufficiency of label space, as prescribed in regulations promulgated under section 403 (e) or (i) of the act, shall apply if such insufficiency is caused by:

(1) The use of label space for any word, statement, design or device which is not required by or under authority of the act to appear on the label;

(2) The use of label space to give greater conspicuousness to any word, statement, or other information than is required by section 403(f) of the act; or

(3) The use of label space for any representation in a foreign language.

(c) (1) All words, statements, and other information required by or under authority of the act to appear thereon in the English language. Provided, however, That in the case of articles distributed solely in a Territory where the

predominant language is one other than English, the predominant language may be substituted for English.

(2) If the label contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in the foreign language.

(3) If the labeling contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear on the labeling in the foreign language.

Similar provisions with appropriate changes in text are applicable to drugs and devices under section 352, and to cosmetics under section 362.

Under Section 902 of the act, *supra*, certain earlier laws "shall remain in force and effect and be applicable to the provisions of this Act", namely, the act of March 4, 1923 (42 Stat. 1500, ch. 268), defining butter and providing a standard therefor; the act of July 24, 1919 (41 Stat. 271, ch. 26), defining wrapped meats as in package form; and the amendment to the Food and Drug Act, section 10A, approved August 27, 1935 (49 Stat. 871, ch. 739) providing for inspection of the sea food industry. "Butter," and "package" as the latter applies to wrapped meats are defined as follows:

Sec. 321a. Same; butter.

For the purposes of this chapter "butter" shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, and containing not less than 80 per centum by weight of milk fat, all tolerances having been allowed for.

Sec. 321b. Same; package.

The word "package" where it occurs in this chapter shall include and shall be construed to include wrapped meats inclosed in papers or other materials as prepared by the manufacturers thereof for sale.

By later amendments (Mar. 2, 1944, 58 Stat. 108; July 2, 1956, 70 Stat. 486), "nonfat dry milk" and "milk" were defined for purposes of the act, *supra*, as follows:

Sec. 321c. Same; nonfat dry milk; milk.

For the purposes of this chapter, nonfat dry milk is the product resulting from the removal of fat and water from milk and contains the lactose, milk proteins, and milk minerals in the same relative proportions as in fresh milk from which made. It contains not over 5 per centum by weight of moisture. The fat content is not over 1½ per centum by weight unless otherwise indicated.

The term "milk", when used herein, means sweet milk of cows.

The intrastate sales of colored oleomargarine were made subject to the act, *supra*, by an amendment in 1950 (64 Stat. 20, ch. 61, sec. 3(c)). The text of the pertinent provisions are as follows:

Sec. 347. Intrastate sales of colored oleomargarine.

(a) Law governing.

Colored oleomargarine or colored margarine which is sold in the same State or Territory in which it is produced shall be subject in the same manner and to the same extent to the provisions of this chapter as if it had been introduced in interstate commerce.

(b) Labeling and packaging requirements.

No person shall sell, or offer for sale, colored oleomargarine or colored margarine unless—

(1) such oleomargarine or margarine is packaged,

(2) the net weight of the contents of any package sold in a retail establishment is one pound or less,

(3) there appears on the label of the package (A) the word "oleomargarine" in type or lettering at least as large as any other type of lettering on such label, and (B) a full and accurate statement of all the ingredients contained in such oleomargarine or margarine, and

(4) each part of the contents of the package is contained in a wrapper which bears the word "oleomargarine" or "margarine" in type or lettering not smaller than 20-point type.

The requirements of this subsection shall be in addition to and not in lieu of any of the other requirements of this chapter.

2. Filled Milk Act (act of Mar. 4, 1923, ch. 262, 42 Stat. 1486-1487; Aug. 27, 1935 ch. 743, 49 Stat. 885; 21 U.S.C. sec. 61-64).

Under this act, filled milk, as defined, is deemed to be an adulterated article of food, injurious to the public health, and its sale declared to constitute a fraud upon the public. It is exempt if prepared and designed for feeding infants and young children and customarily so used on the order of a physician. It is required to be packed in individual cans containing not more than 16½ ounces and bearing a label in bold type that the content is to be used only for that purpose. It must be shipped exclusively to physicians, wholesale and retail druggists, orphan asylums, child-welfare associations hospitals, and similar institutions and generally disposed of by them.

3. Imported Milk Act (Act of Feb. 15, 1927, ch. 155, § 1, 44 Stat. 1101; Reorganization Plan No. IV, § 12, effective June 30, 1940, 54 Stat. 1237; June 25, 1959, Public Law 86-70; 21 U.S. Code §§ 141-149).

This act prohibits the importation of milk and cream unless the shipper holds a valid permit from the Federal Security Administrator who is authorized and directed to make and enforce such regulations as may in his judgment be necessary to carry out the purposes of this act.

Regulations are codified as 21 C.F.R. 290.1 through 290.52. Among requirements prescribed is one to the effect that each container of milk or cream shipped or transported into the United States shall have firmly attached thereto a tag in a prescribed form, bearing the required information in clear and legible type (§ 290.29).

4. Tea—Impure Tea Importation Act, March 2, 1897, ch. 358, 29 Stat. 604; May 16, 1908, ch. 170, 35 Stat. 163; May 31, 1920, ch. 217, 41 Stat. 712, 713; June 27, 1940, ch. 437, 54 Stat. 632; Reorganization Plan No. IV, § 12, effective June 30, 1940, 54 Stat., 12 Stat. 1337; 21 U.S. Code §§ 41-50.

This act prohibits the importation of impure and unwholesome tea; provides for the appointment of a board of experts by the Federal Security Administrator who shall prepare and submit to him standard samples of tea; and direct the Federal Security Administration upon recommendation of the board to fix and establish uniform standards of purity, quality, and fitness for consumption of all kinds of teas imported into the United States.

Regulations fixing tea standards are codified as 21 C.F.R. § 281.1 through 281.43.

5. Federal Hazardous Substances Labeling Act, July 12, 1960, Public Law 86-613, 74 Stat. 372.

The purpose of this legislation is to provide nationally uniform requirements for adequate cautionary labeling of packages of hazardous substances which are sold in interstate commerce and are intended or suitable for household use.

The act provides that a hazardous substance, as defined, which is intended or suitable for household use, would be considered misbranded unless it bears a label on the container which states conspicuously:

1. The name and place of business of the manufacturer, packer, distributor, or seller.

2. The common or usual name or the chemical name if there be no common or usual name, of the hazardous substance, or of each component which contributes substantially to its hazard, unless the Secretary of Health, Education, and Welfare by regulation permits or requires the use of a recognized generic name.

3. The signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic.

4. The signal word "WARNING" or "CAUTION" on all other hazardous substances.

5. An affirmative statement of the principal hazard, such as "Flammable," "Vapor Harmful," "Causes Burns," "Absorbed Through Skin," or similar wording descriptive of the hazard.

6. Precautionary measures describing the action to be followed or avoided.

7. Instruction, when necessary or appropriate, for first-aid treatment.

8. The word "POISON" for any hazardous substance which is defined as "highly toxic."

9. Instructions for handling and storage of packages which require special care in handling or storage.

10. The statement "KEEP OUT OF THE REACH OF CHILDREN," or its practical equivalent.

The label declarations must be located prominently, in the English language, in conspicuous and legible type.

Any hazardous substance in a container, intended or suitable for household use, which is not labeled in accordance with the requirements of this legislation would be deemed to be a misbranded package and would be subject to seizure and condemnation. Criminal penalties and injunctions are also provided for violation of the legislation (H. Rept. 1861, 86th Cong.).

Jurisdiction of this act is placed under the Secretary of Health, Education, and Welfare who is authorized to issue regulations for its enforcement. An earlier related law (The Federal Caustic Poison Act, 44 Stat. 1406) was repealed.

DEPARTMENT OF AGRICULTURE

1. Meat Inspection Acts of June 30, 1906, 34 Stat. 674; March 4, 1907, ch. 2907, 34 Stat. 1260; June 29, 1938, ch. 810, 52 Stat. 21 U.S.C. §§ 71-91.

The meat inspection statute is primarily a health law. Its concern with labeling, while major, is secondary to other methods of regulation. Its purposes are accomplished by different and more direct means of supervision. Such supervision may be grouped under the heading of sanitation of the establishments, inspection of the animals before slaughter, post-mortem inspection, products inspection, laboratory inspection, disposal of condemned material, and labeling. Label-

ing regulations are codified at 9 C.F.R. §§ 17.1-17.14. Excerpts from pertinent sections follow:

§ 17.1 Labeling required;

(a) When, in an official establishment any inspected and passed product is placed or packed in any can, pot, tin, canvas, or other receptacle or covering constituting an immediate or true container, there shall be affixed to such container or covering a label, as hereinafter described in this part: * * *

(c) No container or covering which bears or is to bear a label shall be filled, in whole or in part, except with product which has been inspected and passed in compliance with parts 1 through 29 of this subchapter, which is sound, healthful, wholesome, and fit for human food, and which is strictly in accordance with the statements on the label. No such container or covering shall be filled, in whole or in part, and no label shall be affixed thereto, except under the supervision of a Division employee.

§ 17.2 Labels: What to contain, when and how used.

(a) Labels within the meaning of this part shall include any printing, lithographing, embossing, or other marking on labels, stickers, seals, wrappers or receptacles.

(b) Labels shall contain, prominently and informatively displayed, the true name of the product; the word "ingredients" followed by a list of the ingredients when the product is fabricated from two or more ingredients, except in the case of products for which definitions and standards of identity have been prescribed under Part 28 of this sub-chapter; the name and place of business of the manufacturer, packer, or person for whom the product is prepared; and an inspection legend and the number of the establishment * * * on that portion of the label featuring the name of the product, or, when there are two or more panels, then on the principal display panels * * *.

§ 17.8 False or deceptive labeling and practices.

(a) No product, and no container thereof, shall be labeled with any false or deceptive name, but established trade names which are usual to such articles are not false or deceptive and which have been approved by the Director of Division may be used.

* * * * *

(c) No statement, word, picture, design, or device which conveys any false impression or gives any false indication of origin or quality shall appear on any label.

(d) When a statement of quantity of contents is shown on a label it shall not be false or deceptive. Except as provided in § 17.7 it shall meet the following requirements. It shall represent in terms of avoirdupois weight or liquid measure the quantity of product in the package exclusive of materials packed with it. When no general consumer usage to the contrary exists, the statement shall be in terms of liquid measure, if the product is liquid, or in terms of weight, if the product is solid, semisolid, viscous, or a mixture of solid and liquid. Unless the statement is so qualified as to show that it expresses the minimum quantity, it shall be taken to express the actual quantity. When the statement expresses the minimum quantity, no variation below the stated minimum shall be permitted, and variations above the stated minimum shall be no greater than consistent with filling the container to the stated minimum in accordance with good commercial practice. When the statement expresses actual quantity, variations incident to packaging in accordance with good commercial practice shall be allowed but the average shall not be less than the quantity stated.

2. Poultry Inspection. Poultry Products Inspection Act, 71 Stat. 441, 21 U.S.C. 451 et seq.

This act provides for the compulsory inspection by the U.S. Department of Agriculture of poultry and poultry products and informative labeling of the same.

Among major pertinent provisions as codified in title 21, U.S. Code, are the following:

§ 453. Definitions.

For purposes of this chapter * * *

(n) The term "label" means any written, printed, or graphic material upon the shipping container, if any, or upon the immediate container, including but not limited to an individual consumer package, of the poultry product, or accompanying such product.

* * * *

(p) The term "immediate container" includes any consumer package; or any other container in which poultry carcasses or poultry products, not consumer packaged, are packed.

§ 457. Labeling.

(a) Requirements for shipping and immediate containers.

* * * *

Each immediate container of any poultry product inspected under the authority of this chapter and found to be wholesome and not adulterated shall at the time such product leaves the official establishment bear, in addition to the official inspection mark, in distinctly legible form, the name of the product, a statement of ingredients if fabricated from two or more ingredients including a declaration as to artificial flavors, colors, or preservatives, if any, the net weight or other appropriate measure of the contents, the name and address of the processor and the approved plant number of the official establishment in which the contents were processed. * * *

(b) False or misleading labeling.

The use of any written, printed or graphic matter upon or accompanying any poultry product inspected or required to be inspected pursuant to the provisions of this Chapter or the container thereof which is false or misleading in any particular is prohibited.

§ 458. Prohibited Acts.

The following acts or the causing thereof are prohibited:

(a) The processing, sale or offering for sale, transportation, or delivery or receiving for transportation in commerce or in a designated major consuming area of any poultry product * * * unless the shipping container, if any, and the immediate container are marked in accordance with the provisions of this Chapter. * * *

(d) Using in commerce, or in a designated major consuming area a false or misleading label on any poultry product.

Regulations under the Poultry Products Inspection Act (Code of Federal Regulations, Title 7—Agriculture, Part 81, Section 81.1 et seq).

§ 81.1 Definitions.

The following terms shall have the following meanings.

* * * *

"Consumer package" means any container in which a poultry product is enclosed for the purpose of display and sale to household consumers.

* * * *

The term "immediate container" includes any consumer package; or any other container in which poultry carcasses or poultry products, not consumer packaged, are packed.

* * * *

"Label" means any written, printed, or graphic material upon the shipping container, if any, or upon the immediate container, including but not limited to an individual consumer package of the poultry product, or accompany such product.

§ 81.130. Wording on labels.

(a) Each label approved for use on an immediate container for poultry products shall bear in distinctly legible form the following information:

* * * *

(3) The net weight or other appropriate measure of the contents except that the Administrator may approve the use of labels for certain types of immediate containers which do not bear the net weight: Provided, that the retailer or distributor supplying the retailer agrees in writing to the Administrator to mark the true net weight on the label prior to display and sale thereof. * * * The net weight marked on immediate containers of poultry products shall be the net weight of the poultry and shall not include the weights of the wet or dry packaging materials and giblet wrapping materials.

* * * * *

(b) Each label approved for use on a shipping container shall bear in distinctly legible form the following information:

(1) The official inspection mark * * *

(c) Any label which bears the official inspection mark or any written, printed or graphic matter upon or accompany any poultry product inspected or required to be inspected, pursuant to the provisions of the regulations shall not bear any statement that is false or misleading. If the Administrator has reason to believe that any label in use or prepared for use is misleading in any particular, he may direct that the use of the label be withheld unless it is modified in such manner as the Administrator may prescribe so that it will not be false or misleading. * * *

§ 81.131. False or deceptive terms or devices; and other labeling requirements.

(a) No product, and no container thereof, shall be labeled with any false or deceptive name, but established trade names which are usual to such articles and are not false or deceptive and which have been approved by the Administrator may be used.

* * * * *

§ 81.139. Modifications of approved labels.

(a) The inspector in charge may permit the use of approved labels or other markings which have been modified as follows: Provided, That the labeling or taking as modified is so used as not to be false or deceptive:

(1) All features of the label or marking are proportionately enlarged with the color scheme remaining the same.

(2) Changes in the figures denoting the quantity of contents or when there is substitution of such abbreviations as "lb" for "pound", "oz." for "ounces", or the "pound" or "ounce" is substituted for the abbreviation.

3. Horse Meat Act. The act of July 24, 1919, ch. 26, 41 Stat. 241, brought horsemeat within the purview of the Meat Inspection Act of July 24, 1919 (21 U.S.C. § 96).

All equine meat and food products, transported in interstate commerce, are required to be plainly and conspicuously marked, labeled, branded, or tagged "Horsemeat" or "Horsemeat products" as the case may be, under such rules and regulations as may be prescribed by the Secretary of Agriculture.

Regulations for the inspection and handling of horsemeat and products thereof are codified as section 29.1 through 29.14 of the Code of Federal Regulations.

Domestic meat labels for such products shall be printed with black ink on light green paper of good quality, and shall be 2¾ by 4 inches in size and shall be in form and substance as illustrated in the regulations (9 C.F.R. § 29.5).

4. Imported Meat Act, section 306 of the Tariff Act of 1930, June 17, 1930, ch. 497, 46 Stat. 689; September 2, 1958, Public Law 85-867, 72 Stat. 1685; 19 U.S.C. § 1306 extended the Meat Inspection Act to imported meats.

Under this act meat shall not be imported unless it is healthful, wholesome, and fit for human food and contains no dye, chemical, preservative, or ingredient which renders it unhealthful, unwholesome, or unfit for human food, and unless it also complies with regulations

promulgated by the Secretary of Agriculture. Regulations dealing with imported meats are codified at 9 C.F.R. §§ 27-1—27.21.

5. The act of May 21, 1928, ch. 564 (15 U.S.C. §§ 257-257i) as amended by the act of June 28, 1954, fixed the standard sizes of hampers and round stave baskets, including the type known as "straight side" or "tub" baskets, and splint baskets. Ten standard sizes of hampers and round stave baskets were provided for containing $\frac{1}{8}$, $\frac{1}{4}$, $\frac{3}{8}$, $\frac{1}{2}$, $\frac{5}{8}$, $\frac{3}{4}$, 1, $1\frac{1}{4}$, $1\frac{1}{2}$, and 2 bushels. Splint baskets were standardized in six sizes: 4-, 8-, 12-, 16-, and 24-, and 32-quart capacity.

This act is enforced by the Department of Agriculture, whose Secretary is directed to prescribe necessary regulations for carrying into effect its provision. Such regulations shall provide for reasonable variations occurring in the course of manufacturing and handling.

Regulations under this act and the act of 1916 are codified as 7 C.F.R. §§ 41.1 through 41.22. Generally they provide for marking, specifications, testing of samples, and tolerances or variations.

6. The act of August 31, 1916, ch. 426 (15 U.S.C. §§ 251-256) established three standard sizes and the dimensions of Climax baskets of 2-, 4-, and 12-quart capacity, and standard berry boxes and till baskets containing dry and one-half pint, dry 1 pint, dry 1 quart, or multiples of the dry quart.

This act is enforced by the Department of Agriculture. The Secretary thereof shall establish and promulgate rules and regulations allowing such reasonable tolerances and variations as may be found necessary.

7. Dairy Exports. Dairy Export Act of May 23, 1908 (35 Stat. 254, 21 U.S.C. §§ 71-91).

Under the provisions of this act the Meat Inspection Act was made applicable to dairy products intended for exportation to any foreign country. The Secretary of Agriculture was empowered to require labeling disclosing the identity, purity, quality, and grade of such dairy products.

8. Exportation of Apples and Pears. The act of June 10, 1933, 48 Stat. 123, ch. 59, 7 U.S.C. §§ 581-589 makes it unlawful for any person to ship or any carrier to transport to a foreign destination apples or pears in packages unless accompanied by a certificate issued by the Secretary of Agriculture showing that such fruits are of a Federal or State grade which meets the minimum of quality established for shipment in export.

Regulations are codified at 7 C.F.R. §§ 33.1-22.6. Provisions thereof relating to packing and marking require that each package shall be packed so that the apples or pears in the top layer shall be reasonably representative in size, color, and quality of the contents of the package; and that the packages be plainly and conspicuously marked with (1) the name and address of the grower or packer, (2) the variety of the apples or pears, (3) the grade names, and (4) the numerical count or the minimum size of such apples or pears (§§ 33.10).

9. Exportation of Grapes and Plums. The act of September 2, 1960, 74 Stat. 734, Public Law 86-687, relates to the exportation of grapes and plums. The act and its regulations are similar to the act above providing for the exportation of apples and pears.

The Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., 7 U.S.C. 1621 et seq.).

Under the authority of this act the Agricultural Marketing Service of the Department of Agriculture provides for an inspection service to be established and conducted for the determination and certification or other identification of the grade quality or condition of products to which the act is applicable. In connection with such inspection service a standard pack is prescribed for numerous fresh fruits. Since there is some uniformity in pertinent regulations, there is set forth below the provision for grapefruit which reads:

Fruits shall be fairly uniform in size, unless specified as uniform in size. When packed in boxes, fruit shall be arranged according to the approved and recognized methods. Each wrapped fruit shall be fairly well wrapped.

All packages shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising because of overfilled packages (7 C.F.R. § 51.638).

Under standards for apples "the numerical count or the minimum diameter of the apples packed in a closed container shall be indicated on the container" (§ 51.314) and each package shall be packed so that the apples on the shown face shall be reasonably representative in size, color, and quality of the contents of the package (§ 51.315).

Under regulations providing for an inspection service for processed fruits and vegetables, processed products thereof, and certain other processed food products (7 C.F.R., p. 52) a recommended fill of container is suggested for many canned products. There is some similarity in provisions for different products. The provisions for canned apple juice reads:

The recommended fill of container is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purpose of these grades. It is recommended that each container be filled as full as practicable with apple juice and that the product occupy not less than 90 percent of the volume of the container.

A fill of container is suggested for the following canned vegetables and fruits: Applejuice, applesauce, dried beans, green beans, and wax beans, lima beans, canned beets, blackberries and similar berries, blueberries, carrots, red sour pitted cherries, sweet cherries, cream style corn, whole kernel or whole grain corn, cranberry sauce, canned fruit cocktail, fruit jelly, fruit preserves or jams, grapefruits, grapefruit juice, frozen concentrated grapefruit juice, grapefruit and orange for salad, blended grapefruit juice and orange juice, frozen concentrated blended grapefruit juice and orange juice, grapejuice, extracted honey, frozen concentrate for lemonade, orange marmalade, mushrooms, olive oil, orange juice, frozen concentrated orange juice, pears, field peas, and blackeye peas, cucumber pickles, pineapple, pineapple juice, plums, white potatoes, spinach, sweetpotatoes, tangerine juice, tomato catsup, apples, chili sauce, concentrated orange juice for manufacturing, concentrated orange juice, peas, tomato sauce, sweetened grapejuice, frozen concentrate for limeade, asparagus, clingstone peaches, freestone peaches, apricots, pimentos, pumpkin and squash, apple butter, kadota figs, concentrated tangerine juice for manufacturing, sauerkraut, onions, sugarcane syrup, hominy, raspberries, okra, tomatoes and okra, concentrated grapefruit juice for manufacturing, squash, and tomato juice.

PET FOODS

Regulations for the labeling of pet foods are codified in title 9 of the Code of Federal Regulations:

§ 155.32. Labeling required.

Each container of inspected and certified products shall have affixed thereto a label bearing the following information prominently displayed:

* * * * *

6(b) A statement of the quantity of contents of the container representing in terms of avoirdupois weight the quantity of product in the container.

* * * * *

(c) No certified product and no container thereof shall be labeled with any false or deceptive term, and no statement, word picture, design, or device which conveys any false impression or gives any false indication of the origin, quality, or quantity of the product shall appear on any label.

§ 155.35. Label information to be displayed on principal panel.

The label information * * * shall be displayed on the principal panel or panels of the label except that label information other than the name of the product and the ingredient statement may be displayed on a panel immediately adjacent to the principal panel or panels or such supplemental panel consists of at least 20% of the label and is reserved exclusively for required labeling information.

DEPARTMENT OF COMMERCE

BUREAU OF STANDARDS

1. The act of March 3, 1901, ch. 872, 31 Stat. 1449, 15 U.S.C. §§ 271, established the National Bureau of Standards. Under this act the Secretary of Commerce is authorized to undertake various functions one of which is "cooperation with the States in securing uniformity in weights and measures laws and methods of inspection," and "The compilation and publication of general scientific and technical data resulting from the performance of the functions specified herein or from other sources when such data are of importance to scientific or manufacturing interests or to the general public, and are not available elsewhere" [15 U.S.C. § 272 (f), (5) (19)]. Under this authority the National Bureau of Standards has prepared Handbooks designed to present in compact form comprehensive guides for State and local weights and measures officials. Handbook 67 entitled "Checking Prepackaged Commodities," published in 1959, is a manual for State and local weight and measures officials, describing a method of controlling various prepackaged commodities. Also, under this authority the Bureau of Standards sponsors the National Conference on Weights and Measures which has formulated a model law on weights and measures together with regulations for adoption by the States. The first draft of this law dates from about 1911. It is continually undergoing refinement. Many provisions of State laws on weights and measures are based on the model law.

2. Barrels. The Act of March 4, 1915, (38 Stat. 1186, ch. 158, 15 U.S.C. §§ 234-236) established a standard barrel for fruits and vegetables, other than cranberries, of 7,056 cubic inches and its various subdivisions and the standard cranberry barrel of 5,826 cubic inches and its similar divisions.

Reasonable variations shall be permitted and tolerance shall be established by rules and regulations made by the Director of the Bureau of Standards and approved by the Secretary of Commerce.

Regulations under this act are codified as 15 C.F.R. §§ 241.1-241.7. Factors dealt with are capacities, tolerances, and dimensions of standard barrels.

3. Barrels. The Act of August 23, 1916 (39 Stat. 530, ch. 396, 15 U.S.C. § 237-240) established a large and a small barrel of lime, consisting of 280 pounds and 180 pounds, net weight, respectively. Barrels must be stenciled or marked on one or both heads as to net weight, together with the name of the manufacturer, the name of the brand, if any, under which it is sold, and if imported, the name of the country from which it is imported.

Rules and regulations for enforcement of the act shall be made by the Director of the Bureau of Standards and approved by the Secretary of Commerce. Reasonable variations or tolerances shall be allowed.

Regulations are codified at 15 C.F.R. §§ 240.1-240.6. Factors dealt with are permissible sizes, markings, and tolerances.

FEDERAL TRADE COMMISSION

The act of September 26, 1914, ch. 311, 38 Stat. 717, 15 U.S.C. 41 et seq. establishes the Federal Trade Commission, the purpose of which is to protect business and the public against unfair methods of competition and to prevent practices which would lessen competition or tend to create monopoly. The Commission has extensive advisory and regulatory functions. The regulatory functions are exercised in two ways, informally through procedures designed to encourage voluntary compliance with the law, and formally by adversary proceedings initiated by complaint and culminating, in appropriate instances, in orders to cease and desist. Numbered among the Commission's duties and responsibilities are these:

(a) To prevent the use of unfair methods of competition, and unfair or deceptive acts or practices in interstate commerce, such as acts or practices which are unfair or oppressive or tend to monopoly; combinations which unreasonably restrain competition; and representations, express or implied, which have the capacity of misleading or deceiving members of the public with respect to commodities being offered for sale, all as prohibited by section 5 of the Federal Trade Commission Act;

(b) To prevent the dissemination of false advertisements of foods, drugs, cosmetics, and devices, as provided in sections 12 through 15 of the Federal Trade Commission Act. This is the so-called Wheeler-Lea Act (Public, No. 447, 75th Cong.). The distinction between the Wheeler-Lea Act and the Federal Food, Drug and Cosmetics Act is that the former is concerned with false advertising of food, drugs, devices, and cosmetics while the latter deals with adulteration, packaging, and labeling of the products;

(c) To prevent the misbranding of wool or wool products through failure to comply with the provisions of the Wool Products Labeling Act of 1939 (15 U.S.C. § 68);

(d) To prevent misbranding, false advertising, or false invoicing of furs or fur products through failure to comply with the Fur Products Labeling Act of 1951 (15 U.S.C. 69);

(e) To prevent the introduction or movement in interstate commerce of articles of wearing apparel and fabrics which are so highly flammable as to be dangerous when worn by individuals, in violation of the Flammable Fabrics Act of 1953 (15 U.S.C. 1191);

(f) To prevent misbranding or false advertising of textile fiber products through failure to comply with the Textile Fiber Products Identification Act of 1958 (15 U.S.C. 70).

The Commission may promulgate so-called trade practice conference rules for industry which are in the nature of advisory opinions for the guidance of businessmen. These rules are designed to eliminate and prevent, on a voluntary and industrywide basis, trade practices and method of competition and business behavior in an industry which constitute violations of laws administered by the Commission. Such rules have been promulgated for 200 or more industries.

Among industries for which such rules have been promulgated are these: The paper bag industry (16 C.F.R. pt. 24); gummed paper and sealing tape industry (*ibid.*, pt. 19); tuna industry (*ibid.*, pt. 146); folding paper box industry (*ibid.*, pt. 147); fine and wrapping paper distributing industry (*ibid.*, pt. 189); set-up paper box industry (*ibid.*, pt. 211); frozen food industry (*ibid.*, pt. 22); macaroni and noodle products industry (*ibid.*, pt. 132); tomato paste manufacturing industry (*ibid.*, pt. 133); oleomargarine manufacturing industry (*ibid.*, pt. 134); wine industry (*ibid.*, pt. 139); sardine industry (*ibid.*, pt. 144); ripe olive industry (*ibid.*, pt. 148); cocoa and chocolate industry (*ibid.*, pt. 194); grocery industry (*ibid.*, pt. 209).

Regulations under the Wool Products Labeling Act of 1939 (54 Stat. 1128; 15 U.S.C. § 68j) are codified as 16 C.F.R. 300.1-300.35.

Generally, they provide that the marking of wool products under the act shall be in the form of a stamp, tag, label, or other means of identification, showing and displaying upon the product the required information, legibly, conspicuously, and nondeceptively (16 C.F.R. § 300.3).

Regulations under the Fur Products Labeling Act of 1951 (65 Stat. 179; 15 U.S.C. 69) are codified as 16 C.F.R. §§ 301.0-301.49.

The information required thereunder shall be set out on the label in a legible manner and in not smaller than pica or 12 point type, and all parts of the required information shall be set out in letters of equal size and conspicuousness (16 C.F.R. § 301.29).

Regulations under the Flammable Fabrics Act of 1953 (67 Stat. 111; 15 U.S.C. 1191) are codified as 16 C.F.R. §§ 302.1-302.14, and are concerned with the testing of textile fabrics. Marketing is prohibited if so highly flammable as to be dangerous when worn by individuals (*ibid.*, § 302.2).

Regulations under the Textile Fiber Products Identification Act of 1958 (72 Stat. 1717; 15 U.S.C. 70) are codified as 16 C.F.R. §§ 303.1-303.45. They require that each textile fiber product, except those exempted or excluded under section 12 of the act shall be labeled or invoiced in conformity with the requirements of the act and regulation.

DEPARTMENT OF THE INTERIOR

BUREAU OF COMMERCIAL FISHERIES

Fish and Wildlife Act of 1956 (70 Stat. 119, ch. 1036, 16 U.S.C. §§ 741-754).

Section 6 of this act provided for transfer to the Secretary of the Interior of all functions exercised by other agencies relating primarily to the development, advancement, management, conservation, and protection of commercial fisheries. Among functions transferred under this authority were those of the Department of Agriculture pertaining to fish, shellfish, and products thereof performed under title II of the act of August 1946 popularly known as the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1921-1927) including but not limited to the development and promulgation of grade standards, the inspection and certification, and improvement of transportation facilities and rates for fish and shellfish and any products there.

Regulations pertaining to commercial fisheries provided for an inspection service of processed fishery products, processed products thereof, and certain other processed food products. Inspection is concerned primarily with quality and is limited to a determination of—

1. Essential characteristics, such as style, type, size, sirup density, or identity of any processed product which differentiates between major groups of the same kind;

2. The class, quality, and condition of any processed product, including the condition of the container thereof by the examination of appropriate samples.

Standards are prescribed for numerous frozen fishery products:

1. Frozen fried fish sticks (*ibid.*, §§ 261.1-261.31); frozen raw breaded shrimp (*ibid.*, §§ 261.1-262.32); frozen fish blocks (*ibid.*, §§ 263.1-263.25); frozen haddock fillets (*ibid.*, §§ 264.1-264.31); frozen halibut steaks (*ibid.*, §§ 265.1-265.31); frozen raw breaded fish portions (*ibid.*, §§ 266.1-266.17); frozen cod fillets (*ibid.*, §§ 267.1-267.31); frozen salmon steaks (*ibid.*, §§ 268.1-268.31); ocean-perch fillets and frozen Pacific-ocean-perch fillets (*ibid.*, §§ 269.1-269.31); and frozen raw headless shrimp (*ibid.*, §§ 272.1-272.31).

INTERSTATE TRANSPORTATION OF BLACK BASS AND OTHER FISH

Pertinent regulations provide that—

Any package or container * * * shall be clearly and conspicuously marked on the outside thereof with the name "Fish", an accurate statement of the number of each species of such fish contained there, and the names and addresses of the shipper and consignee (16 U.S.C. § 852(a)).

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

INTERNAL REVENUE CODE OF 1954

1. Import tax on oleomargarine.

Packing requirements for manufacturers. All oleomargarine shall be packed in firkins, tubs, or other wooden, tin-plate, or paper packages, not before used for that purpose, containing or encased in a

manufacturer's package made from any such materials or not less than 10 pounds. The packages shall be marked, stamped, and branded as the Secretary or his delegate shall prescribe, and all sales by manufacturers shall be in original stamped packages. Each package shall bear a caution label against reuse of the container or the stamps thereon (§ 4594).

All sales made by wholesale dealers shall be in original stamped packages (§ 4595).

Retail dealers must sell only from original stamped packages, in quantities not exceeding 10 pounds, and shall pack, or cause to be packed, the oleomargarine sold by them in suitable wooden, tin-plate, or paper packages which shall be marked and branded as the Secretary or his delegate shall prescribe (*ibid*).

2. Regulatory tax on adulterated and process or renovated butter (26 U.S.C. 4811-4819).

The packing and stamping requirement for adulterated butter appear to be the same as for oleomargarine (§ 4814). The selling requirements provide that dealers in adulterated butter must sell only original or from original stamped packages, and when such original stamped packages are broken the adulterated butter sold from same shall be placed in suitable wooden, tin-plate, or paper packages, which shall be marked as the Secretary or his delegate shall prescribe (§ 4815).

The marking of process or renovated butter is provided for by section 4817 and is under the jurisdiction of the Secretary of Agriculture. Pertinent provisions of that section require that all process or renovated butter and the packages or containers thereof shall be marked with the words "Process Butter" and by such other marks, labels, or brands, and in such manner, as may be prescribed by the Secretary of Agriculture. This section also prohibits false and misleading labels as follows: "No statement that is false or misleading in any particular shall be placed on or affixed to any wrapper, label, carton, or container of process or renovated butter."

Regulations provide that each carton, wrapper, or other container shall bear a plain and conspicuous statement of the net weight of the contents; and that such cartons, wrappers, or containers shall bear no pictorial, or other representation, which may create the impression that the article therein contained is other than process or renovated butter (9 C.F.R. § 171.40).

3. Tax on Filled Cheese, 26 U.S.C. §§ 4831-4836.

Packing Requirements.

Filled cheese shall be packed by the manufacturers in wooden packages only, not before used for that purpose, and marked, stamped, and branded with the words "Filled Cheese" in blackfaced letters not less than 2 inches in length, in a circle in the center of the top and bottom of the cheese; and in blackfaced letters not less than 2 inches in length in line from the top to the bottom of the cheese, on the side in four places equidistant from each other; and the package containing such cheese shall be marked in the same manner and in the same number of places, and in the same description of letters as above provided for the marking of the cheese; and all sales or consignments made by manufacturers of filled cheese to wholesale dealers in filled cheese or to exporters of filled cheese shall be in original stamped packages.

Retail dealers in filled cheese shall sell only from original stamped packages, and shall pack the filled cheese when sold in suitable wooden or paper packages, which shall be marked and branded in accordance with rules and regulations to be prescribed by the Secretary or his delegate.

4. Federal Alcohol Administration Act (Aug. 29, 1935, 49 Stat. 977, 27 U.S.C. § 201 et seq.).

This Act provides for the supervision and control of the liquor industry. The provision dealing with labeling is as follows:

§ 205. Unfair competition and unlawful practices. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:

(e) Labeling.

To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs, custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Secretary of the Treasury, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof, (2) as will provide the consumer with adequate information as to * * * the net contents of the package, * * *

Regulations are codified in title 27 of the Code of Federal Regulations, and are comprehensive in scope. Wine, distilled spirits, and malt beverages are treated separately. Among pertinent provisions are these: Required statements shall be on a contrasting background (wine, § 4.38; distilled spirits, § 5.40; malt beverages, § 7.28); size of type is prescribed (wine, § 4.38; distilled spirits, § 5.40; malt beverages, § 7.28); false and misleading statements are prohibited (wine, § 4.39; distilled spirits, § 5.41; malt beverages, § 7.29); standard containers and standards of fill are provided for (wines, §§ 4.71 and 4.72; distilled spirits, §§ 5.72 and 5.73); tolerances are specified (wine, § 4.37; distilled spirits, § 5.730); containers shall not be made or formed as to mislead the purchaser (wine, § 4.71; distilled spirits, § 5.72).

5. Tobacco Tax.

§ 5723. Packages, marks, labels, notices, and stamps.

(a) Packages.

All tobacco products and cigarette papers and tubes shall, before removal, be put up in such packages as the Secretary or his delegate shall by regulation prescribe.

(b) Marks, labels, notices, and stamps.

Every package of tobacco products or cigarette papers or tubes shall, before removal, bear the marks, labels, notices, and stamps, if any, that the Secretary or his delegate by regulation prescribes.

(c) Lottery features.

No certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products or cigarette papers or tubes.

(d) Indecent or immoral picture, print, or representation shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products or cigarette papers or tubes.

(e) Exceptions.

Tobacco products furnished by manufacturers of such products for use or consumption by their employees, or for experimental purposes, and tobacco products and cigarette papers and tubes transferred to the bonded premises of another

manufacturer or export warehouse proprietor or released in bond from customs custody for delivery to a manufacturer or tobacco products or cigarette papers and tubes, may be exempted from subsection (a) and (b) in accordance with such regulations as the Secretary or his delegate shall prescribe.

Regulation under 26 U.S.C. § 5723 above are found in title 26 of the Code of Federal Regulations.

Section 270.144 applying to manufacturers of cigars and cigarettes reads:

§ 270.144 Packages.

(a) General. All cigars and cigarettes shall before removal, be put up by the manufacturer in packages which shall bear the stamps, class designation, and mark, as required by this subpart. Such packages shall be of such construction as will securely contain the cigars and cigarettes therein and maintain such stamps, class designation, and mark thereon: Provided, That cigars and cigarettes transferred to another manufacturer of such products, removed for export, furnished for consumption by employees, or used for experimental purposes, shall be exempt from the provisions of this paragraph.

(b) Subdivision into parcels. Packages may be subdivided into parcels which shall not bear such stamps, class designation, or the warning of the mark.

(c) Lottery features. No certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery shall be contained in, attached to, or stamped, marked, written, or printed on any package of cigars or cigarettes removed for domestic consumption.

(d) Indecent or immoral material.

No indecent or immoral picture, print, or representation shall be contained in, attached to, or stamped, marked, written, or printed on any package of cigars or cigarettes.

Similar provisions are applicable to importers under § 270.100; to manufacturers of tobacco under § 275.134; and to importers under § 275.180; to manufacturers of cigarette papers and tubes (§ 285.121), and to importers (§ 285.151); to manufacturers of tobacco products and cigarette papers and tubes (§§ 290.181-290.187) and to cigars (§§ 290.248-290.254).

BUREAU OF CUSTOMS

The packing and stamping of cigars, cigarettes, medicinal preparations, perfumery, manufactured tobacco, cigarette papers and tubes, playing cards, oleomargarine, distilled spirits, wines and malt liquors, is provided for by 19 C.F.R. §§ 11.1-11.7. Certain markings are required by succeeding sections (§§ 11.8-11.13), which relate mainly to country of origin, fiber content of wool products, composition of fur products, and the labeling of textile fiber products.

COAST GUARD

Explosives: Regulations of the Coast Guard pertaining to the transportation or storage of explosives or other dangerous articles or substances, and combustible liquids on board vessels are codified as part 146 and 147 of the Code of Federal Regulations and comprise some 700 pages of regulations. Packing, marking, and labeling requirements are treated under §§ 146.05-1 through 146.06-20. Among subjects treated under these sections are acceptable shipments, prohibited packing, prescribed containers, various specification containers, shipping papers, and labels.

INTERSTATE COMMERCE COMMISSION

Explosives and other dangerous articles (references are to title 49, Codes of Federal Regulations) :

The regulations of the Interstate Commerce Commission relating to the transportation of explosives and other dangerous articles are set forth in parts 71 through 78 of title 49 of the Code of Federal Regulations. The purpose of these regulations is to promote the uniform enforcement of law and to minimize the dangers to life and property incident to the transportation of explosives and other dangerous articles by common carriers engaged in interstate or foreign commerce. The regulations define these articles for transportation purposes, state the precautions that must be observed by the shipper in preparing them for shipment by rail freight, rail express, rail baggage, highway, water, or by air carrier. Explosives and other dangerous articles may be offered to carriers for transportation provided the articles are in proper condition for transportation, are as defined, and are packed, marked, labeled, described, certified, and otherwise as provided for in the regulations. Articles must be loaded and stayed in accordance with these regulations. Methods of manufacture, packing, and storage, insofar as they affect safety in transportation, must be open to inspection by a duly authorized representative of the initial carrier or of the Bureau of Explosives. Shipments that do not comply with regulations must not be offered for transportation (§ 73.1).

FEDERAL AVIATION AGENCY

Explosives; shipping requirements (references are to title 14, Code of Federal Regulations) :

§ 49.11. Packing and marking requirements.

Unless otherwise specifically provided in this part, explosives and other dangerous articles shall be packed and marked in accordance with the requirements prescribed in Parts 72, 73, and 78 of the I.C.C. Regulations (49 C.F.R. Parts 72, 73, 78) as are applicable to rail express.

§ 49.12. Labeling requirements.

Unless otherwise specifically provided in this part, explosives and other dangerous articles acceptable under the provisions of this part for transportation in air commerce shall be labeled by the shipper with the appropriate label specified in the I.C.C. Regulations even though they may be exempt from I.C.C. labeling requirements by virtue of I.C.C. quantity and packing limitations (14 C.F.R. § 49.11).

POST OFFICE DEPARTMENT

Transmission of articles through the mails (18 U.S.C. § 1716) :

* * * The Postmaster General may permit the transmission in the mails, under such rules and regulations as he shall prescribe as to preparation and packing of any such articles which are not outwardly or of their own force dangerous or injurious to life, health or property.

Consideration will now be given to such of the above laws and regulations as seem pertinent to the areas of interest named by the committee.

1. Obscure net weight designation.

The principal law dealing with packaged goods is the Federal Food, Drug, and Cosmetic Act of 1938. Under provisions relating to the misbranding of food, a food will be deemed misbranded (1) if it is in

package form and fails to bear a label containing an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, and (2) if any mandatory information is not prominently placed on the label with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use (21 U.S.C. § 343 (e), (f)). (The FDA does not have authority to issue regulations having the force and effect of law regarding the provisions of this section. The regulations referred to are only advisory in nature.) The regulations (31 C.F.R. §1.9) set forth several grounds which may affect the prominence of the required statements. These may be summarized briefly as follows:

(1) The required statements should appear on the part of the container which is presented or displayed under the usual conditions of sale;

(2) Where the package has several parts or panels, any of which is likely to be the part or panel displayed, the statements should be repeated on each of such available panels;

(3) The label should extend over the area of the package available for such extension so as to provide sufficient space for the prominent placing of the statements;

(4) Insufficiency of label space should not result from the use of such space for nonrequired statements;

(5) Insufficiency of label space should not result from the use of such space "to give materially greater conspicuousness to any other word, statement, or information; and

(6) The prominence of required statements should not be affected by—

(a) Smallness or style of type, (b) insufficient background contrast, (c) obscuring designs or vignettes, or (d) crowding with other written, painted, or graphic matter.

No exemption depending on insufficiency of label space shall apply if such insufficiency is caused by—

(1) The use of label space for any word, statement, design, or device which is not required by the statute to appear upon the label.

(2) The use of label space to give greater prominence to any word, statement, or other information than the law requires.

(3) The use of label space for any representation in a foreign language.

Certain other laws referred to above deal with conspicuousness of the net weight statement but in much less detail. For example the label for poultry shall bear in distinctly legible form the net weight or other appropriate measure of contents; the statement of quantity of content regarding pet foods shall be prominently displayed; each carton of process or renovated butter shall bear a plain and conspicuous statement of the net weight of the contents; and the mandatory label information for wine and distilled spirits, which includes a net content statement, shall be in readily legible script, type, or printing not smaller than 8-point Gothic caps except that if contained among other descriptive or explanatory reading matter the required material shall be of a size substantially more conspicuous than such other descriptive or explanatory reading matter. Containers of less than one-

half pint capacity are exempt from the foregoing requirement but the labels thereon shall be readily legible under ordinary conditions.

2. Oversized Packages.

A food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading (21 U.S.C. § 343(d)).

The formulation and issuance of standards of fill of containers is authorized by section 401 of the act (21 U.S.C. § 341). The only limitation outside the common requirement that the standard be reasonable in scope and application is that due consideration be given to the natural shrinkage in storage and in transit of fresh natural food and to need for the necessary packing and protective material. In those instances where standards of fill of container have been provided for, such specifications, of course control. Reasonable standards of fill of container have been formulated and established for only a few canned products: Peaches, apricots, pears, cherries, fruit cocktail, crushed pineapple, pineapple juice, tomatoes, shrimp, oyster, tuna, pears, corn, and mushrooms.

The regulations vary in explicitness. As to peaches, apricots, pears, and cherries, the standard of fill of container is the maximum quantity of the optional ingredients which can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredients. With respect to tomatoes, crushed pineapple, pineapple juice, and corn, the standard of fill of container is a fill of not less than 90 percent of the total capacity of the container, as determined by the general method for fill of container prescribed under 21 C.F.R. § 102(b). The standard of fill for fruit cocktail is a fill such that the total weight of drained fruit is not less than 65 percent of the water capacity of the container as determined by the general method for water capacity of containers prescribed by 21 C.F.R. § 10.2(a). The standard of fill for peas is fill such that, when the peas and liquid are removed from the container and returned thereto, the leveled peas, irrespective of the quantity of the liquid, 15 seconds after they are so returned completely fill the container. A container with lid attached by double seam shall be considered to be completely filled when it is filled to the level 3/16 inch vertical distance below the top of the double seam; and a glass container shall be considered to be completely filled when it is filled to the level 1/2 inch vertical distance below the top of the container. As to mushrooms, the standard of fill is based on the weight of drained mushrooms and the dimensions of containers. Weights for containers of certain dimensions are set forth at 21 C.F.R. § 51.503. The standard of fill for tuna is set forth in a table under 21 C.F.R. §§ 37.3. The weight for different can sizes and forms of tuna is prescribed. As to shrimp, specific cut and weights are prescribed for various sized containers. And the fill for oysters is such that the drained weight of oysters taken from each container is not less than 59 percent of the water capacity of the container.

Slack filled wine containers are covered by 27 C.F.R. § 4.71(2) which provides that containers shall be so filled as to have a headspace not in excess of 6 percent of total capacity after closure if the net contents of the container is 2/5 pint or more, and a headspace not in excess of 10 percent of capacity in the case of all other containers.

A liquor bottle of a capacity of one-half pint or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess

of 8 percent of the total capacity of the bottle after closure [ibid. § 5.72 (c)].

3. Multiple size packages.

We understand the practice here relates to the packaging of a given commodity in slightly different sizes of containers with considerable variations in contents.

No statutory provision or regulation dealing with this specific situation is found.

4. Packaging to price (particularly where a drop in contents is made without changing the package size or is accompanied by a new and improved promotion in a redesigned container which gives the appearance of being greater in size than the old container although the contents are less).

Again, no statutory provision or regulation dealing with the specific situation presented is found. A drop in contents without a change in size of container may constitute slack-filling which is banned (21 U.S.C. § 343(d)); and a redesigned container which gives the appearance of being greater in size might be banned by the same section as misleading. The section reads "A food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading."

5. Odd size packaging, (particularly by the use of fractions making it difficult to make price comparisons).

We understand that the practice referred to here is one of packaging rather than one of labeling. No provision of the Food, Drug, and Cosmetic Act appears to be violated by this practice. The factor of standard packages is apparently involved. Some limitation of packages has been provided under other Federal laws. Examples are oleomargarine, wine, and distilled spirits.

6. Packaging in misleading sizes and shapes.

This practice might come within the ban on misleading containers quoted above which is to the effect that a container must not be so made, formed, or filled as to be misleading (21 U.S.C. § 343(d)).

Wine containers shall be so made and formed as not to mislead the purchaser. Such containers will be deemed misleading if the actual capacity is substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use (27 C.F.R. § 471(1)). Similar provisions are applicable to containers for distilled spirits (ibid. § 572.(a)(d)).

7. Use of misleading art on package.

The term "label" includes the display of graphic matter upon the immediate container (21 U.S.C. § 321(k)), and a food is misbranded if its labeling is false or misleading in any particular (21 U.S.C. § 343(a)).

As to meats, no statement, word, picture, design, or device which gives any false impression or gives any false indication of origin or quality shall appear on any label (9 C.F.R. § 17.8(c)).

With respect to poultry, the use of any written, printed, or graphic matter upon or accompanying any poultry product inspected or required to be inspected which is false or misleading in any particular is prohibited (21 U.S.C. 457 (b)).

Pet-food labels shall bear no picture, design, or device which conveys any false impression or gives any false indication of the origin, quality, or quantity of the product (9 C.F.R. § 155.32(6)(c)).

Wine is deemed to be misbranded if the container or any label thereon bears any graphic, pictorial, or emblematic representation that is prohibited by the act or regulations (27 C.F.R. § 4.31). Similar provisions are applicable to distilled spirits (*ibid.*, § 5.31).

8. Misrepresenting package contents on labels.

We understand the practice to be considered here is short weight packages.

The label of a food in package form, must in addition to the disclosure of the name and address of the manufacturer, packer, or distributor of the article, also bear an accurate statement of the quantity of its contents in terms of weight, measure, or numerical count. The failure to comply with this requirement renders the product misbranded (21 U.S.C. § 3436). However, under the above provision "reasonable variation shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the Secretary." As to whether the quantity of the contents is to be declared in terms of net weight or measure or gross the regulations provide that "the statement of the quantity of the contents shall reveal the quantity of food in the package, exclusive of wrappers and other materials packed with such food" (21 C.F.R. § 1.86). The required statement of contents may express either the minimum quantity, or the average quantity, of the contents, of the package. If the minimum quantity statement is utilized this fact must be signified by printing in conjunction with the statement the information that the declaration relates to the minimum quantity of each package. If the statement is not so qualified to show definitely that the quantity expressed is the minimum, it will be concluded that the quantity stated represents the average quantity.

Where the statement expresses the minimum quantity, no variation below the declared weight or measure is permitted, except that there may be a variation due to atmospheric conditions. The regulations provide as to this exception that if the actual contents of a package fall below the stated net weight solely by reason of ordinary and customary exposure after the food is introduced into interstate commerce to conditions which may normally occur in good distribution practice, and such circumstances unavoidably result in decreased weight or measure, the food will not be deemed violative of the quantity of contents provision (21 C.F.R. § 1.8(j)). This section also provides that "variations above the stated minimum shall not be unreasonably large."

When the statement expresses the average quantity, deviations are permissible in two instances: (1) The variation permitted under the statement of minimum quantity relating to atmospheric conditions is allowed here. (2) A variation is permitted when caused by unavoidable deviations in weighing, measuring, or counting individual packages which occur in good packing practice (21 C.F.R. § 1.8(k)).

With respect to meats, when a statement of quantity of contents is shown on a label it shall not be false or deceptive (9 C.F.R. § 17.8(d)). When the statement expresses the minimum quantity no variation below the stated minimum shall be permitted. When the statement expresses actual quantity, variations incident to packaging in accordance with good commercial practice shall be allowed but the average shall not be less than the quantity stated (*ibid.*).

In the matter of distilled spirits, the following tolerances shall be allowed:

1. Discrepancies due exclusively to errors in measuring which occur in filling conducted in compliance with good commercial practice.

2. Discrepancies due exclusively to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles so as to be of uniform capacity: Provided: That no greater tolerance shall be allowed in case of bottles which because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.

3. Discrepancies in measure due exclusively to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment (27 C.F.R. § 5.73 (b)).

Similar provisions are applicable to wine (27 C.F.R. § 4.37 (e)).

9. Misuse of "cents off" promotions.

On the basis of our understanding of how "cents off" promotions are handled as disclosed by the hearings before your subcommittee, it would seem that this practice is not covered by the Food, Drug, and Cosmetic Act or regulations promulgated thereunder or by any other act listed above.

10. Misleading quantity terminology such as "jumbo," etc.

No reference is found in the above laws or regulations dealing specifically with limitations on quantity terminology.

II

STATE LAWS AND REGULATIONS

There are numerous State laws dealing with the inspection, grading, certification, etc., of various products. However, the States in responding to our request for regulations quite generally furnished only these under their pure food laws and those under the law of weights and measures providing for the labeling of packaged commodities generally. We have summarized or quoted the pertinent provisions of those laws and regulations by State; and they are set forth below. With respect to food laws, the provisions relating to misbranding are similar to either the Federal Food, Drug, and Cosmetic Act of 1938, or the earlier Food and Drug Act of 1906. The act of 1938 is distinguished from the earlier act, for purposes of this study by its broader coverage and more stringent definitions of misbranding. The act of 1906 classified a food as misbranded if the article was labeled or branded so as to deceive or mislead the purchaser; and in the case of packaged food, if the quantity of the contents were not conspicuously marked on the package in terms of weight, measure, or numerical count. The act of 1938 classified a food as misbranded, if its labeling is false or misleading in any particular; if its container is so made, formed, or filled as to be misleading; and if in package form unless it bears a label containing an accurate statement of the contents in terms of weight, measure, or numerical count. Required information must be prominently placed on the label with such conspicuousness (as compared with other words,

statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. The misbranding provisions of 34 States are similar to those of the act of 1938, and 16 are similar to the act of 1906.¹

Some 36 States have general provisions for packaged commodities. This includes two States (Arizona and Iowa), the laws of which are of limited application. Packaging laws range from a simple requirement that each package or container have written or stamped thereon the correct weight of the contents in pounds and ounces, to fairly comprehensive requirements similar to those relating to the misbranding of food. Some of the more recent enactments are similar to the latest version of the Model State Law on Weights and Measures sponsored by the National Bureau of Standards which includes provisions for marking of contents, standards of fill, misleading sizes and shapes, misrepresentations of contents, misrepresentations of prices, and misleading quantity terminology.

With respect to items 3, 4, and 5 of the State summaries, no provisions were found which seemed directly in point on the basis of our understanding of the problem involved. As to multiple package sizes (item 3) we understand the practice is to package a given commodity in containers only slightly different in size but varying widely in contents. This practice would seem to be covered by provisions against slack-filled packages, and provisions providing for a standard fill of container.

With respect to packaging to price (item 4), we understand that the practice involved is similar of that of multiple packages. The package, or its appearance, remains substantially the same but the contents are reduced so as to sell for a certain price. Again it would seem that this practice may come within provisions relating to slack filling, and standards of fill.

With respect to odd-size packaging, particularly the use of fractions (item 5), this practice does not appear to come within the ban of any statute or regulation that we have examined.

The model law adopted by the National Conference of Weights and Measures and the pertinent parts of the Uniform State Food, Drug, and Cosmetic Bill recommended by the Association of Food and Drug Officials of the United States precedes the summaries of the States.

U.S. DEPARTMENT OF COMMERCE, NATIONAL BUREAU OF STANDARDS

MODEL STATE REGULATION PERTAINING TO PACKAGES: EXEMPTIONS, MARKING REQUIREMENTS, VARIATIONS

As adopted by the National Conference on Weights and Measures

(Amendments through 1963)

(The National Conference on Weights and Measures is sponsored by the National Bureau of Standards in partial implementation of its statutory responsibility for "cooperation with the States in securing uniformity in weights and measures laws and methods of inspection.")

¹ Alabama, Arizona, Delaware, Illinois, Iowa, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Jersey, Pennsylvania, South Carolina, South Dakota, and West Virginia.

MODEL STATE REGULATION PERTAINING TO PACKAGES: EXEMPTIONS, MARKING
REQUIREMENTS, VARIATIONS

Pursuant to the authority vested in me as set forth in sections _____ of chapter _____ of the _____ statutes of the State of _____ [cite sections authorizing promulgation of general regulations and special package marking regulations], I, _____, State Director of Weights and Measures, hereby adopt and promulgate the following regulation:

REGULATION NO. _____

1. *Application.*—This regulation shall apply to any commodity in package form; that is, any commodity put up or packaged in any manner in advance of sale (except an auxiliary container, not intended to be sold to the consumer intact, enclosing packages that are individually marked in conformance with the requirements of this regulation) and to any item on which there is marked a selling price based on an established price per unit of weight or measure. *Provided*, That a package shall be exempt from the requirement for declaration of quantity if, in terms applicable to the commodity, it contains (a) in the case of a commodity not a drug or cosmetic, less than $\frac{1}{2}$ ounce avoirdupois, less than $\frac{1}{2}$ fluid ounce, or less than 6 units, (b) in the case of a drug, less than 6 units, or (c) in the case of a cosmetic, less than $\frac{1}{4}$ ounce avoirdupois, less than $\frac{1}{8}$ fluid ounce, or less than 6 units. (Exemptions involving declarations in terms of count shall be permitted only if the units of commodity can easily be counted without opening the package.)

2. *Declaration of identity.*—The declaration of identity shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like, unless the commodity may easily be identified through wrapper or container.

3. *Declaration of quantity.*

3.1. *Net quantity.*—The declaration of quantity shall disclose the net quantity of the commodity; that is, the quantity of commodity in the package exclusive of wrappers and any other material packed with such commodity.

3.2. *Terms—Weight, measure, or count.*—The declaration of the quantity of a particular commodity shall be expressed in such terms of weight, measure, or count, or a combination of count and weight, measure, or size, as have been firmly established in general consumer usage and trade custom and as give accurate information as to the quantity of the commodity. But if there exists no firmly established general consumer usage and trade custom with respect to the terms used in expressing such declaration of quantity, the declaration shall be 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: *Provided*, That, if the commodity is packaged in an aerosol container, the declaration shall be in terms of weight (including the propellant): *And provided further*, That, if the commodity is a textile material, the declaration shall be in terms of linear measure unless the material is one in which there exists a firmly established general consumer usage and trade custom to declare the quantity in terms of weight, in which case the declaration may be in terms of weight.

3.3. *Units—Weight, measure.*—A declaration of quantity (a) in units of weight shall be in terms of the avoirdupois pound or ounce; (b) in units of liquid measure shall be in terms of the United States gallon of 231 cubic inches or liquid-quart, liquid-pint, and fluid-ounce subdivisions of the gallon, and shall express the volume at 68° F (20° C) except in the case of a commodity that is normally sold while frozen or refrigerated, when the declaration shall express the volume at the temperature normally prevailing when such commodity is sold; (c) in units of linear measure shall be in terms of the yard, foot, or inch; and (d) in units of dry measure shall be in terms of either the United States bushel of 2,150.42 cubic inches or peck, dry-quart, and dry-pint subdivisions of the bushel, or the United States standard barrel of 7,056 cubic inches or of three-quarters, one-half, and one-third barrel subdivisions: *Provided*, That, in the case of drugs, in lieu of any requirement to the contrary, the declaration of quantity may be in terms of a unit of the apothecaries or metric system of weight or measure: *And provided further*, That, in the case of a commodity packed for export shipment, the declaration of quantity may be in terms of a system of weight or measure in common use in the country to which such shipment is to be exported.

3.4. *Units with two or more meanings.*—When any unit of weight or measure having two or more distinct meanings is employed in a declaration of quantity, the

declaration shall identify the particular meaning of the term as it is employed in the declaration. For example, distinction shall be made between "avoirdupois" and "fluid" ounces, and between "liquid" and "dry" quarts and pints. However, such distinction may be omitted when, by association of terms (as in "1 pound 4 ounces" or "1 pint 8 fluid ounces"), the proper meaning is obvious.

3.5 Prescribed units.—A declaration of quantity shall be expressed in terms of the largest whole unit of weight or measure (for example, 1 quart liquid shall be expressed as "1 quart liquid" and not as "2 pints liquid" or "32 fluid ounces"). However, when this results in a whole number and a fraction, the fraction may be expressed in its equivalent in the next smaller whole unit (for example, $1\frac{3}{4}$ quarts liquid may be expressed as "1 quart $1\frac{1}{2}$ pints liquid" or "1 quart 1 pint 8 fluid ounces," but not as "1 quart 24 fluid ounces"; $1\frac{1}{4}$ pounds may be expressed as "1 pound 4 ounces"): *Provided*, That, if there exists, with respect to a particular commodity, a firmly established general consumer usage and trade custom to express the declaration of quantity as a fraction of a unit of weight or measure larger than the total quantity being declared or as a number of units smaller than the largest whole unit of weight or measure involved, the declaration, if informative to consumers, may be made in accordance with such usage and custom.

3.6. Reduction of fractions.—Declarations of quantity may employ only binary-submultiple common fractions or decimal fractions. A common fraction shall be reduced to its lowest terms, and, except in the case of drugs, a decimal fraction shall not be carried out to more than two places: *Provided*, That, if there exists, with respect to a particular commodity, a firmly established general consumer usage and trade custom contrary to the requirement for the use of only binary submultiples of common fractions or for the reduction of a common fraction to its lowest terms, the declaration may be made in accordance with such usage and custom.

3.7. Supplementary declarations.

3.7.1. Metric system.—A declaration of weight or measure in U.S. customary units may be supplemented by a declaration in units of the metric system.

3.7.2. Count to be supplemented.—A declaration of quantity in terms of count shall be supplemented by a declaration of the weight, measure, or size of the individual units of the commodity, or of the total weight or measure of the commodity, unless a declaration of count alone is fully informative to the consumer.

3.7.3. Weight or measure to be supplemented.—A declaration of quantity in terms of weight or measure shall be supplemented by a declaration of the count or size of the individual units of the commodity, unless a declaration of weight or measure alone is fully informative to the consumer.

3.8. Character of declaration.—A declaration of quantity shall express average net quantity: *Provided*, That a declaration may express minimum quantity when such declaration is definitely so identified by the addition of some such words as "minimum quantity" or "not less than."

3.9. Qualification of declaration prohibited.—In no case shall a declaration of quantity be qualified by the addition of the words "when packed" 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.

4. Declaration of responsibility.—Any package kept, offered, or exposed for sale, or sold, at any place other than on the premises where packed, shall bear on the outside of the package the name and address of the manufacturer, packer, or distributor.

5. Language.—All information required to appear on a package shall appear thereon in the English language.

6. Prominence and placement.—All information required to appear on a package 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. The declaration of identity, if required, and the net quantity statement shall appear on the principal display panel of the package. The name and address of the manufacturer, packer, or distributor shall appear either on the principal display panel or on any other appropriate panel. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

7. Information required on outside container.—All information required to appear on a package shall also appear on any outside container or wrapper that is used, unless such container or wrapper is transparent and the information on the package is easily legible through such outside container or wrapper.

8. *Variations to be allowed.*

8.1. *Packaging variations.*

8.1.1. *Variations from declared net quantity.*—Variations from the declared net weight, measure, or count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages that occur in good packaging practice, but such variations shall not be permitted to such extent that the average of the quantities in the packages of a particular commodity comprising either a shipment or other delivery of the 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.

8.1.2. *Variations from declared minimum quantity.*—Where the minimum quantity is declared, no packaging variations below the declared minimum shall be permitted, and variations above the declared minimum shall not be unreasonably large.

8.2. *Variations resulting from exposure.*—Variations from the declared weight or measure shall be permitted when caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result in change of weight or measure, but only after the commodity is introduced into intrastate commerce: *Provided*, That the phrase "introduced into intrastate commerce" as used in 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 made either (a) directly to the purchaser or to his agent, or (b) to a common carrier for shipment to the purchaser, and this paragraph shall be construed as requiring that, so long as a shipment, delivery, or lot of packages of a particular commodity remains in the possession or under the control of the packager or the person who introduces the package into intrastate commerce, exposure variations shall not be permitted.

8.3. *Magnitude of permitted variations.*—The magnitude of variations permitted under paragraphs 8.1., 8.1.1., 8.1.2., and 8.2. of this regulation shall, in the case of any shipment, delivery, or lot, be determined by the facts in the individual case.

9. *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 _____

are hereby revoked.

EFFECTIVE DATE

This regulation shall become effective on _____

Given under my hand and the seal of my office in the City of _____,

_____, on this _____ day of _____,

A.D. 19____

Signed _____

MODEL REGULATION FOR PAPER PRODUCTS

Pursuant to the authority vested in me as set forth in section (Sections 9 and 25 of the Model Law) of Chapter _____ of the _____ statutes of the State of _____ [cite sections authorizing promulgation of general regulation and special commodity sections], I, _____, State Director of Weights and Measures, hereby adopt and promulgate the following regulation:

1. *Paper napkins and paper towels.*—The declaration of quantity on a package of paper napkins or paper towels shall indicate the numerical count and the dimensions of the individual napkins or towels contained in the package.

2. *Writing paper, notebook paper, envelopes.*—The declaration of quantity on a package of writing paper, notebook paper, or envelopes shall indicate the number of sheets or envelopes, as the case may be, in the package. When envelopes are included in a package of writing paper, the declaration shall indicate both the number of sheets of paper and the number of envelopes.

3. *Tablets and books of writing paper.*—The declaration of quantity on a package of tablets or books of writing paper shall indicate the number of tablets or books in the package.

4. *Wrapping paper.*—The declaration of quantity on a package of wrapping paper in sheet form may be in terms of either numerical count or of net weight. If the declaration is in terms of numerical count, it shall indicate both the dimensions of an individual sheet and the number of sheets in the package.

5. *Facial tissues.*—The declaration of quantity on a package of facial tissues shall indicate the numerical count of usable units (a sheet of two or three ply shall be considered a single usable unit) and the dimensions of the individual unit.

6. *Toilet tissues.*—The declaration of quantity on a package of toilet tissues in roll or sheet form shall indicate the numerical count of usable units (a sheet of two or three ply shall be considered a single usable unit) and the dimensions of the individual unit.

7. *Supplementary quantity declarations.*—Any declaration or statement relating to the quantity of contents of a package of paper product that is in addition to or supplementary to the declaration required by law or regulation shall be in juxtaposition with and shall be subordinated to the required declaration.

8. *Exemption.*—Rolls or packages of paper products for industrial use only and not for resale need not be marked individually so long as the container in which such rolls or packages are packed is properly marked to show the quantity of the contents of such container.

This regulation is additive to valid laws and other regulations pertaining to packages and shall not be construed as superseding any such law or regulation.

STATES WITH STATUTORY REQUIREMENTS PERTAINING TO PACKAGES SUBSTANTIALLY THE SAME AS THE PROVISIONS OF THE MODEL LAW (NATIONAL CONFERENCE ON WEIGHTS AND MEASURES)

Alaska	New Mexico
Arkansas	Puerto Rico
Colorado	South Carolina
Delaware	Tennessee
Illinois	Texas
Maine	Virginia
Maryland (exemptions as to certain commodities)	Washington
Missouri	West Virginia
Nevada	Wisconsin
	and perhaps others

REVISED FORM

UNIFORM STATE FOOD, DRUG AND COSMETIC BILL

THE ASSOCIATION OF FOOD AND DRUG OFFICIALS OF THE UNITED STATES

- Section 1. Title.
- Section 2. Definitions.
- Section 3. Prohibited Acts.
- Section 4. Injunction Proceedings.
- Section 5. Penalties and Guaranty.
- Section 6. Seizure.
- Section 7. Prosecutions—States Attorney.
- Section 8. Minor Violations.
- Section 9. Food—Definitions and Standards.
- Section 10. Food—Adulteration Defined.
- Section 11. Food—Misbranding Defined.
- Section 12. Emergency Permit Control.
- Section 13. Food—Tolerances for added poisonous ingredients.
- Section 14. Drugs and Devices—Adulteration Defined.
- Section 15. Drugs and Devices—Misbranding Defined.
- Section 16. New Drugs.
- Section 17. Cosmetics—Adulteration Defined.
- Section 18. Cosmetics—Misbranding Defined.
- Section 19. False Advertising.
- Section 20. Regulations—Hearings.
- Section 21. Inspections—Examinations.
- Section 22. Publicity.
- Section 23. Separability Clause.
- Section 24. Effective Date.

SECTION 1. This Act may be cited as the (State) Food, Drug, and Cosmetic Act.

SECTION 2. For the purpose of this Act—

(a) The term “-----” means the *-----

(b) The term “person” includes individual, partnership, corporation, and association.

(c) The term “food” means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term “drug” means (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(e) The term “device” (except when used in paragraph (k) of this section and in Sections 3 (j), 11 (f) and 15 (c) and 18 (c) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

(f) The term “cosmetic” means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles, except that such term shall not include soap.

(g) The term “official compendium” means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(h) The term “label” means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) The term “immediate container” does not include package liners.

(j) The term “labeling” means all labels and other written, printed, or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(k) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(l) The term “advertisement” means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(m) The representation of a drug, in its labeling or advertisement, as an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

* * * * *

(p) The provisions of this Act regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for

sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

(q) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of (**insert title of applicable state law) or (**the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C., Secs. 135-135k) as now enacted or as hereafter amended), and which is used in the production, storage, or transportation of raw agricultural commodities.

(r) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

* * * * *

(u) The term "Federal Act" means the Federal Food, Drug and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

SECTION 3. The following acts and the causing thereof within the State of leaders are hereby prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic.

(c) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of Section 12 or 16.

(e) The dissemination of any false advertisement.

(f) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by Section 21.

(g) The giving of a guaranty of undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State of _____ from whom he received a good faith the food, drug, device, or cosmetic.

(h) The removal or disposal of a detained or embargoed article in violation of Section 6.

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this Act.

(k) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that any application with respect to such drug is effective under Section 16, or that such drug complies with the provisions of such section.

SECTION 4. In addition to the remedies hereinafter provided the _____* is hereby authorized to apply to (Court) for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of Section 3; irrespective of whether or not there exists an adequate remedy at law.

SECTION 5. (a) Any person who violates any of the provisions of Section 3 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than _____ or a fine of not more than _____, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than _____, or a fine of not more than _____, or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated section 3 (a) or (c) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the State of _____ from whom he received in good

faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this Act, designating this Act.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the -----* to furnish the -----* the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the State of ----- who causes him to disseminate such advertisement.

SECTION 6. (a) Whenever a duly authorized agent of the -----* finds or has probable cause to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this Act, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded, he shall petition the judge of the police, county, or circuit court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; Provided, That when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to claimant thereof for such labeling or processing under the supervision of an agent of the -----*. The expense of such supervision shall be paid by claimant. Such shall be returned to the claimant of the article on the representation to the court by the -----* that the article is no longer in violation of this Act, and that the expenses of such supervision have been paid.

* * * * *

SECTION 7. It shall be the duty of each state attorney, county attorney, or city attorney to whom the -----* reports any violation of this Act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this Act is reported to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the -----* or its designated agent, either orally or in writing, in person, or by attorney, with regard to such contemplated proceeding.

SECTION 8. Nothing in this Act shall be construed as requiring the -----* to report for the institution of proceedings under this Act, minor violations of this Act, whenever the -----* believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

SECTION 9. Whenever in the judgment of the -----* such action will promote honesty and fair dealing in the interest of consumers, the -----* shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the -----* shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated

shall conform so far as practicable to the definitions and standards promulgated under authority of the Federal Act.

* * * * *

SECTION 11. A food shall be deemed to be misbranded—

- (a) If its labeling is false or misleading in any particular.
- (b) If it is offered for sale under the name of another food.
- (c) If it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by Section 9; or if it is an imitation of another food that is not subject to subsection (g) of this section, unless its label bears in type of uniform size and prominence, the word, imitation, and, immediately thereafter, the name of the food imitated.
- (d) If its container is so made, formed, or filled as to be misleading.
- (e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; Provided, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the -----*.
- (f) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by Section 9, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the foods specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.
- (h) If it purports to be or is represented as—
 - (1) a food for which a standard of quality has been prescribed by regulations as provided by Section 9 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or
 - (2) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by Section 9, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.
- (i) If it is not subject to the provisions of paragraph (g) of this section, unless it bears labeling clearly giving (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; Provided, That to the extent that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated, That the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the -----.
- (k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; Provided by the -----* * *.
- (j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the -----* determines to be, and by regulations prescribed, as necessary in order to fully inform purchasers as to its value for such uses.
- (l) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.
- (m) If it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the Federal Act.

* * * * *

SECTION 15. A drug or device shall be deemed to be misbranded—

- (a) If its labeling is false or misleading in any particular.
- (b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; Provided, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the _____*.
- (c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (d) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative has been by the _____* after investigation, found to be, and by regulations under this Act, designated as, habit forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."
- (e) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including whether active or not the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; Provided, That to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the _____*.
- (f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; Provided, That where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the _____* shall promulgate regulations exempting such drug or device from such requirements.
- (g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, That the method of packing may be modified with a consent of the _____*. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not those of the United States Pharmacopoeia.
- (h) If it has been found by the _____* to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the _____* shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the _____* shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.
- (i) (1) If it is a drug and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.

(j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

SECTION 18. A cosmetic shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the _____*.

(c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed or filled as to be misleading.

(e) If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the Federal Act. This paragraph shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in the last sentence of section 17(a)).

SECTION 19. (a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this Act the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false, except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public-health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, That whenever the _____* determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the _____* shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the _____* may deem necessary in the interests of public health: Provided, That this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

SECTION 20. (a) The authority to promulgate regulations for the efficient enforcement of this Act is hereby vested in the _____*. The _____* is hereby authorized to make the regulations promulgated under this Act conform, insofar as practicable with those promulgated under the Federal Act.

(b) Hearings authorized or required by this Act shall be conducted by the _____* or such officer, agent, or employee as the _____* may designate for the purpose.

(c) Before promulgating any regulations contemplated by Section 9; 11(j); 12; 15 (d), (f), (g), (h), and (m), or 19(b), the _____* shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the _____* (which date shall not be prior to _____ days after its promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation the _____*, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

SECTION 21. The -----* or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose:

(1) of inspecting such factory, warehouse, establishment or vehicle to determine if any of the provisions of this Act are being violated, and

(2) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample. It shall be the duty of the -----* to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this Act is being violated.

SECTION 22. (a) The -----* may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this Act, including the nature of the charge and the disposition thereof.

(b) The -----* may also cause to be disseminated such information regarding food, drugs, devices and cosmetics as the -----* deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the -----* from collecting, reporting, and illustrating the results of the investigations of the -----*.

SECTION 23. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the Act and applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 24. This Act shall take effect ----- after the date of its enactment.

ALABAMA

Code, Recompiled 1958.

Regulations under food law examined. Those under weights and measures not available. The definitions of misbranding of food are similar to those of the Federal act of 1906.

1. Obscure net weight designation.

(a) Food: The quantity of contents in terms of weight, measure, or numerical count must be "plainly and conspicuously marked on the outside of the package" (title 2, § 309).

The statement of the quantity of the contents shall be plain and conspicuous, shall not be a part of or obscured by any legend or design, and shall be so placed and in such characters as to be readily seen and clearly legible when the size of the package and the circumstances under which it is ordinarily examined by purchasers or consumers are taken into consideration (regulations).

(b) Commodities generally: Statutory provision, same as for food (title 2, § 613).

2. Oversized packages.

(a) Food. Package must be filled with the food it purports to contain within allowable tolerances (title 2, § 309).

*Insert proper designation of State Officer, Board, Department, etc.

**Alternative use only on one of the parenthetical enclosures.

***That the Association does not object to an additional provision to Section 11 (i) of the Bill as follows:

"And provided further that the requirements of Clause (2) of this paragraph shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the -----*."

And that this proviso be made an optional part of that section of the Uniform Bill.

The package shall not be less than 95 percent filled with the food it purports to contain (regulations). Exceptions to the foregoing general rule are (1) oatmeal, rolled oats, rolled oat groats, and other oat flakes, 85 percent; (2) corn flakes and similar products, 75 percent; (3) whole and ground spices, 70 percent, 75 percent, and 80 percent for packages of less than 2 ounces, 2 to 3 ounces, and 3 ounces or more, respectively (regulations).

(b) Commodities generally: No provision.

3. Multiple package sizes.

No provision. Standard packages have been provided for milk and cream, commercial feeds, corn meal and grits, flour, oats, and mellorine.

4. Packaging to price.

No provision.

5. Odd-size packaging particularly the use of fractions.

No provision.

6. Packaging in misleading sizes and shapes.

No provision. The food law is patterned after the Federal law of 1906 and does not in express terms proscribe misleading containers. No specific prohibition is found under weights and measures provisions.

7. Use of misleading art on packages.

(a) Food: An article of food shall be deemed misbranded if the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular (title 2, § 309; and regulations).

A food or drug product shall not be labeled or branded in such a manner as to deceive or mislead the purchaser. Direct misstatements and indirect misrepresentations regarding the article or its ingredients are prohibited; whether by means of designs, or artifices in the arrangement, styles, or dress of the package, or in the arrangement of the printed or pictorial matter in or upon the label or package (regulations).

(b) Commodities generally: No provision.

8. Misrepresenting package contents on the label.

(a) Food: Package must be filled with the food it purports to contain within reasonable tolerances. (See item 2 above.)

9. Misuse of "cents off" promotions. No provision.

10. Misleading quantity terminology such as "jumbo," etc.

No provision.

ALASKA

Regulations under food law examined; those under weights and measures not available for examination.

The Alaska Food, Drug, and Cosmetic Act (§§ 40-5A-1 through 40-5A-23) and the regulations issued thereunder are similar to the existing Federal act and regulations based thereon. Statements below relate to commodities generally.

1. Obscure net weight designation.

Any commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declaration of the net quantity of the contents in terms of weight, measure, or count.

Reasonable variations or tolerances are to be allowed (Laws 1961, ch. 101, § 23).

2. Oversize packages.

The director of weights and measures may prescribe regulations for enforcement of the act including "standards of net weight, measure, or count, and reasonable standards of fill, for any commodity in package form" (*ibid.*, § 9).

3. Multiple package sizes.

No pertinent provision found. Standard packages have been provided for bread (*ibid.*, § 29), butter, oleomargarine, and margarine (*ibid.*, § 30), fluid dairy products (*ibid.*, § 31), and flour, corn meal, and hominy grits (*ibid.*, § 32).

4. Packaging to price.

No provision.

5. Odd-size packaging, particularly the use of fractions.

No provision.

6. Packaging in misleading sizes and shapes.

No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed or filled, as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standards of fill as may have been prescribed for the commodity in question by the director. (*ibid.*, § 25).

7. Use of misleading art.

No provision found.

8. Misrepresenting package contents on the label.

Net quantity of contents must be stated. Reasonable variation or tolerances are to be allowed and exemptions are to be established for small packages by regulation. Variations or tolerances to be allowed—

may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure. Exceptions may be granted as to (a) small packages, and (b) commodities put up in variable weights or sizes for sale to the consumer intact and either customarily not sold as individual units or customarily weighed or measured at the time of sale to the consumer (*ibid.*, § 23).

9. Misuse of "cents off" promotion.

There is a prohibition against misrepresentation of price under section 27 which provides that whenever any commodity is sold, etc.—the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser.

10. Misleading quantity terminology such as "jumbo," etc.

"Any term qualifying a unit of weight, measure or count (for example 'jumbo,' 'giant,' 'full,' and the like) that tends to exaggerate the amount of commodity in a package" shall not be used (*ibid.*, § 23).

ARIZONA

Revised Statutes Annotated.

Regulations have not been promulgated under the food law. Those under weight and measures not available. The definitions of misbranding of food are similar to those of the Federal act of 1906.

1. Obscure net weight designation.

(a) Food: A food is misbranded if: * * *

(5) It is contained in a package with the contents stated in terms of weight and measure, and such weight and measure are not plainly and correctly stated on the outside of the package (§ 36-903).

(b) Commodities generally: No net weight statement is required for packages generally. Such a statement is required for miscellaneous food materials sold in packages or containers. The pertinent section reads as follows:

A. Where butter, tea, baking powder, oatmeal, tapioca and all cereals and farinaceous goods, wheat flour, buckwheat flour, cornmeal, rice, beans, sugar, barley, bran, wheat, oats, corn, potatoes, onions, seed, ham, bacon, lard, lard compounds or substitutes, soda crackers, or dried fruits, are sold in packages or containers, each package or container shall have written or stamped upon the wrapper or upon the package or container the correct weight of the contents in pounds and ounces, or fractions of a pound avoirdupois. It is unlawful for any person to sell or offer for sale any package or container of such commodities on which the correct weight of the contents is not written or stamped.

B. An allowance of not exceeding two and a half percent shall be made for shrinkage on all containers of wheat flour, buckwheat flour, cornmeal, rice, beans, sugar, barley, bran, wheat, oats, corn, potatoes, onions, seed, ham, bacon, or butter.

2. Oversized packages.

(a) Food: No provision.

(b) Commodities generally: See text of section 44-2173 (b) set forth above for the allowance of $2\frac{1}{2}$ percent for shrinkage as to the pertinent commodities.

3. Multiple package sizes.

No provision found. Standard packages have been provided for bread (§ 44-2162) and milk, cream, and distilled water (§ 44-2168).

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packing in misleading sizes and shapes.

No provision.

7. Use of misleading art.

(a) Food: A food is misbranded if—

(b) The package or the label thereof bears a statement, design, or device regarding the ingredients or the substance contained therein which is false or misleading in any particular (§ 36-903).

8. Misrepresenting package contents on label.

(a) Food: If the contents of packaged food are stated in terms of weight and measure such weight and measure must be correctly stated on the outside of the package (§ 36-903(5)). Under section 44-2173 (see item 1 above) an allowance of $2\frac{1}{2}$ percent is permitted for shrinkage as to the foods covered by that section.

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology, such as "jumbo," etc.

No provision.

ARKANSAS

Statutes Annotated.

Regulations under the Arkansas Food, Drug, and Cosmetic Act examined. Those pertaining to weights and measures not available for examination.

The Arkansas Food, Drug, and Cosmetic Act, and the regulations issued thereunder, are similar to the existing Federal act. Statements below relate to weight and measures. The Weights and Measures Act of 1963 (Act 482) has considerably expanded Arkansas regulation of packaging and labeling.

1. Obscure net weight designation.

The "true weight" must be stamped on packages of certain products as required by section 79-110 which reads as follows:

It shall be unlawful for any corporation, firm, manufacturer, merchant, or other dealer, their agent or employees, to sell, or offer for sale, any grain, chops, bran, fertilizer, meal, or flour in sacks, barrels or other packages unless the true weight of such grain, chops, bran, fertilizer, meal, or flour be stamped or marked upon the sacks, barrel or other packages.

2. Oversize packages.

No provision.

3. Multiple packages sizes.

No pertinent provision found. Standard packages have been provided for commercial feeding stuffs and mellorine.

4. Packaging to price.

Act 482. SEC. 21. SAME: DECLARATIONS OF UNIT PRICE ON RANDOM PACKAGES.—In addition to the declarations required by Section 20 of this Act, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

Act 482. SEC. 22. SAME: MISLEADING PACKAGES.—No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled, as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standards of fill as may have been prescribed for the commodity in question by the director.

7. Use of misleading art.

No provision.

8. Misrepresenting package contents on label.

Every package, bag or bundle of goods or merchandise shall contain in weight what it is branded, marked or said to contain.

Act 482. SEC. 20. SAME: PACKAGES: DECLARATIONS OF QUANTITY AND ORIGIN: VARIATIONS: EXEMPTIONS.—Except as otherwise provided in this Act, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package a definite, plain, and conspicuous declaration of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, (2) the net quantity of the contents in terms of weight, measure, or count, and (3) in the case of any package kept, offered, or exposed for sale, or sold any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor. Provided, that in connection with the declaration required under clause (2), neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant,"

"full," and the like) that tends to exaggerate the amount of commodity in a package, shall be used. Provided, further, that under clause (2) the director shall, by regulation, establish (a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidable result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

9. Misuse of "cents off" promotions.

Act 482. SEC. 25. MISREPRESENTATION OF PRICE.—Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count include a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of the numerals representing the whole cents.

10. Misleading quantity terminology such as "jumbo half quart," "super giant," "king size," "economy size."

Act 482. SEC. 23. SAME: ADVERTISING PACKAGES FOR SALE.—Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package. Provided, that in connection with the declaration required under this section there shall be declared neither the qualifying term "when packed" nor any other words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package.

CALIFORNIA

Regulations under Pure Foods Act examined first. No regulations have been promulgated under chapter 6 of the Business and Professions Code dealing with containers.

The California Pure Foods Act (Health and Safety Code, §§ 26463), in its pertinent provisions, and the regulations issued thereunder are essentially the same as the Federal act. Statements below relate to the subject of containers which is administered by the Bureau of Weights and Measures of the California Department of Agriculture. These provisions are codified as chapter 6 of the Business and Professions Code. This year four bills (315, 316, 377, and 378) were passed by the California State Legislature as amendments to the Code. These further specify what constitutes an improper packaging or labeling practice.

1. Obscure net weight designation.

Net weight must be plainly and conspicuously indicated. The pertinent sections read:

12606. Whenever any commodities are sold in containers, the net quantity of the contents of the container shall be plainly and conspicuously marked, branded, or otherwise indicated on the side or top thereof or on a label or tag attached thereto.

(Certain minor exceptions to the above requirement are set forth in this law.)

AN ACT To amend section 12606 of the Business and Professions Code, relating to weights and measures

The People of the State of California Do Enact as Follows:

SECTION 1. Section 12606 of the Business and Professions Code is amended to read:

"12606. Whenever any commodities are sold in containers, the net quantity of the contents of the container shall be plainly and conspicuously marked, branded, or otherwise indicated on the principal display panel of the container or on a label or tag attached thereto; provided that containers, circular in cross-sectional area, may contain the statement of net quantity on either the principal display panel or on an area immediately adjacent thereto, which area shall be equivalent to not less than 20 percent of the entire label, or on the top of the container if the cross-sectional area is not less than the cross-sectional area of the bottom of the container. The size of the markings shall be governed by the area of the display panel, or the area of the label or tag attached.

"The director shall establish necessary rules and regulations to carry out the design of this chapter. Any such rule or regulation, or amendment thereof, shall be adopted and promulgated by the director in conformity with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code."

The provisions of this section do not apply:

(a) To containers while being used for the delivery of a food which, in accordance with the practice of the trade, is to be processed, labeled, packed or repacked on premises other than where originally placed in such containers.

(b) To transparent wrappings, devoid of any words, letters or numerals, used as a means of protecting the commodity, when the weight or count of the contents, or any portion thereof, is accurately determined at time of, and for the immediate purpose of, sale.

(c) To an unlidded container when the weight of the contents, or any portion thereof, can be accurately determined at the time of, and for the immediate purpose of sale, by the seller at the request of the buyer, on a weighing device installed for the purpose on the premises of the seller and sealed in accordance with the provisions of this division.

(d) To an unlidded container when the count of the contents, or any portion thereof, is accurately determined at the time of, and for the immediate purpose of, sale.

(e) To containers of fruits and vegetables, when the quantity is expressed in terms of count as required by the provisions of Chapter 2 (commencing at Section 781), Division 5 of the Agricultural Code, and the count is accurate with no tolerance below the actual count allowed.

(f) To containers of petroleum products where the net quantity of the contents of such containers is plainly and conspicuously marked, branded or otherwise indicated on the side or top thereof.

2. Oversize packages.

Such packages would seem to be prohibited by section 12605 which reads in part as follows:

12605. No container wherein commodities are packed shall have a false bottom, false side walls, false lid or covering, or be otherwise so constructed or filled, wholly or partially, as to facilitate the perpetration or deception of fraud.

Under section 12614 there may be a discrepancy in the weight if such discrepancy is due to unavoidable leakage, shrinkage, evaporation, waste, or causes beyond the control of the seller acting in good faith.

3. Multiple package sizes.

Standard packages have been provided for bread (Business and Professions Code, §§ 19800-19809), flour, cornmeal and hominy grits (ibid., § 13000), and milk (Agricultural Code, §§ 457, 461).

AN ACT To amend section 19804 of the Business and Professions Code, relating to the standard bread loaf

The People of the State of California Do Enact as Follows:

SECTION 1. Section 19804 of the Business and Professions Code is amended to read:

19804. Whenever any bread is wrapped, in any wrapping, for sale through retail outlets, there shall appear on the body of the wrapping, or on the insert band, in letters clear and legible to the buyer or prospective buyer, in a color contrasting with the background, the words required by this section. Such label shall also comply in all respects with the provisions of Chapter 6 (commencing with Section 12601) of Division 5 of this code.

The words required on such label shall read "standard loaf, minimum net weight 15 oz.," or "standard large loaf, minimum net weight 1 lb. 6½ oz.," as the case may be, and the lettering thereof shall be of minimum height of one-quarter inch.

Sec. 2. This act shall become operative January 1, 1964.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

Section 12605 which prohibits the use of certain containers seems relevant. See its text under item 2 above.

7. Use of misleading art.

No provision.

8. Misrepresenting package contents.

An accurate statement of the contents is required by section 12606. Variations are permitted:

(1) If due to unavoidable leakage, shrinkage, evaporation, waste, or causes beyond the control of the seller acting in good faith.

(2) If the seller purchased the commodity in the container, in good faith, relying on the indication of the net contents thereof, and sold the commodity in the container without altering the contents or the indication of the contents, and the container had the name of a packer, manufacturer, wholesaler, or jobber thereon at the time the seller purchased it (ibid.).

AN ACT To amend section 12608 of the Business and Professions Code, relating to containers

The People of the State of California Do Enact as Follows:

SECTION 1. Section 12608 of the Business and Professions Code is amended to read:

12608. The statement designating the quantity of the commodity shall be expressed in the terms of weight, measure, numerical count, or combination of numerical count and weight or measure, which are generally used by consumers to express quantity of such commodity and shall give accurate information as to the quantity thereof. If no general consumer usage exists which expresses accurate information as to the quantity of such commodity, the statement shall be in terms of liquid measure if the commodity is liquid, or in terms of weight if the commodity is solid. The quantity of viscous or semisolid commodities, or of a mixture of solids and liquids, may be stated in terms of weight or measure or both. When commodities are packed in brine or other nonedible preserving fluids, the weight or measure of the brine or nonedible fluid shall not be included in the weight or measure of the edible or other commodity indicated on the container. The content declaration for commodities packed in aerosol-type containers shall be in terms of net weight.

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology such as "jumbo," etc.

AN ACT To amend section 12609 of the Business and Professions Code, relating to containers

The People of the State of California Do Enact as Follows:

SECTION 1. Section 12609 of the Business and Professions Code is amended to read:

"12609. (a) A statement of weight shall be in terms of the avoirdupois pound and ounce, or avoirdupois pound and decimal fraction. A statement of liquid measure shall be in terms of the United States gallon of 231 cubic inches, one-half gallon, quart, pint, and fluid ounce, and, with the exception of liquid petroleum products, shall express the volume at 68 degrees Fahrenheit (20 degrees centigrade). A statement of dry measure shall be in terms of the United States bushel of 2,150.42 cubic inches, peck, dryquart, and dry pint. In lieu thereof, the statement of weight or measure may be in terms of the metric system of weight or measure. A statement of numerical count shall be expressed either in English words or Arabic numerals.

"(b) In no case shall a declaration of quantity be qualified by the addition of the words, "when packed" 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 the commodity in the container."

COLORADO

Colorado Revised Statutes.

Regulations not available for examination.

The Colorado Food and Drug Act (§§ 66-22-1), in its pertinent provisions, is similar to the existing Federal act. Standards of fill are not provided for. However, standards of fill for commodities generally are provided for, by section 151-1-7 under the general subject of weights and measures. Statements below relate to commodities generally.

1. Obscure net weight designation.

Any commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declaration of the net quantity of the contents in terms of weight, measure, or count.

Reasonable variations or tolerances are to be established and allowed, and also exemptions as to small packages (§ 151-1-18).

2. Oversized packages.

No commodity in package form shall be so wrapped nor shall it be in a container so made, formed, or filled, as to mislead the purchaser as to the quantity of the contents of the package and the contents of a container shall not fall below such reasonable standards of fill as may have been prescribed for the commodity in question by the commissioner (151-1-19).

3. Multiple package sizes.

No provision found. Standard packages have been provided for flour, cornmeal, and hominy grits (§ 151-1-29), oleomargarine (§ 7-8-14), and berries and small fruits (§ 151-1-27).

4. Packaging to price.

No provision found.

5. Odd-size packaging.

No provision found.

6. Packaging in misleading sizes and shapes.

See item 2 above.

7. Use of misleading art.

No provision.

8. Misrepresenting package contents on label.

The net quantity of the contents in terms of weight, measure, or count must be stated on the package. The Commissioner of Agriculture, by regulation shall establish reasonable variations or tolerances to be allowed, and also exceptions as to small packages (§ 151-1-18).

9. Misuse of "cents off" promotions.

There is a prohibition against misrepresentation in price. Whenever a commodity is sold "the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser" (§ 151-1-22).

10. Misleading quantity terminology, such as "jumbo," etc.

No provision.

CONNECTICUT

General Statutes.

Regulations under food law, and weight and measures, examined.

The Connecticut Food, Drug, and Cosmetic Act (§§ 19-211 through 19-239), in its pertinent provisions is similar to the existing Federal act.

No statutory provisions found dealing with the packaging and labeling of commodities generally.

Standard packages are provided for bread, milk, and oleomargarine.

DELAWARE

Code Annotated.

Regulations under food laws not available. Regulations under recent weights and measures law have not been promulgated. Provisions relating to the misbranding of food are similar to those of the Federal act of 1906.

1. Obscure net weight designation.

(a) Food: Food in package form must have the quantity of the contents--

plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count (§ 3309).

Commodities generally:

A commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declaration of * * * (2) the net quantity of the contents in terms of weight, measure or count (§ 5120)

Section 5127, applying to bread, is more specific:

The net weight shall be shown on a label in legible printing at least $\frac{1}{4}$ inch in height. The net weight as stated shall be within reasonable variations or tolerances that shall be promulgated by regulation by the director. It shall be placed adjacent to the brand name in a conspicuous place in contrasting color.

Regulation 6, promulgated under section 5120, states that--

All information required to appear on a package shall be prominent, definite, and plain, and shall be conspicuous as to size and style of letters and numbers and as to color of background. Such information shall appear on the principal display panel of the package. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

2. Oversize packages.

Food: No provision in food law.

Commodities generally: Under the Weights and Measures Act adopted in 1961, the director shall issue "reasonable regulations" for the enforcement of the act, which may include "reasonable standards of fill for any commodity in package form (§ 5109). And "no commodity in package form shall be so wrapped, nor shall it be in a container so made, formed or filled, as to intentionally mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the director" (§ 5122).

3. Multiple package sizes.

No provision found. Standard packages are provided for bread, butter, oleomargarine, margarine, fluid dairy products, flour, cornmeal, berries, and small fruits.

4. Packaging to price.

No provision.

5. Odd-size packages.

No provision.

6. Packaging is misleading sizes and shapes.

Food: No provision found.

Commodities generally: Misleading packages are prohibited by section 5122. See text under item 2 above.

7. Use of misleading art.

Food: A food is misbranded—

If the package containing it on its label bears any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design or device is false or misleading in any particular (§ 3309).

Commodities generally: No provision.

8. Misrepresenting package contents on label.

Food: Quantity of contents must be stated on package. No provision found for variations.

Commodities generally: A commodity in package form shall bear on the outside of the package a declaration of the net quantity of the contents. Reasonable variations may be established and allowed which may include variations below the declared weight or measure caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result is decrease weight or measure. Exemptions may be established for (a) small packages, and (b) commodities put up in variable weights or sizes for sale intact and not customarily sold as individual units, or weighed or measured at time of sale to customer.

9. Misuse of "cents off" promotions.

Food: No provision.

Commodities generally: Misrepresentation of price is prohibited. Whenever any commodity is sold by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser (§ 5125).

10. Misleading quantity terminology such as "jumbo," etc.

Food: No provision.

Commodities generally: In connection with the required declaration of net quantity no term qualifying a unit of weight, measure, or count (for example "jumbo," "giant," "full," and the like) that tends to mis-

lead the purchaser as to the amount of commodity in a package shall be used (§ 5120).

FLORIDA

Statutes Annotated.

Regulations under the food law, and the weights and measures law, examined.

The Florida Food, Drug, and Cosmetic Law (ch. 500 of the Statutes), in its pertinent provisions, and regulations thereunder are similar to those of the existing Federal act. Statements below relate to commodities generally.

1. Obscure net weight designation.

Commodities in package form shall have the net quantity of the contents plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count. Reasonable variations or tolerances shall be permitted; and exemptions granted as to small packages (§ 531.26).

2. Oversized packages.

It is unlawful to offer for sale any commodity in package form if its container is so made, formed, or filled, or if it is so wrapped, as to mislead the purchaser as to the quantity of the contents; or if the contents of its container fall below the standard of fill prescribed by regulations of the Commissioner of Agriculture (§ 531.28).

3. Multiple package sizes.

No provision found. Standard packages are provided for wheat flour (§ 531.34).

4. Packaging to price.

No provision found.

5. Odd-size packaging.

No provision found.

6. Packaging in misleading sizes and shapes.

A container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents is banned (§ 531.28). (See item 2 above for text.)

7. Use of misleading art.

No provision found.

8. Misrepresenting package contents on the label.

The net quantity of the contents must be marked on the outside of the package (§ 531.26).

Variations from the stated weight or measure shall be permitted when caused by ordinary and customary exposure, after the package is weighed or measured, to conditions which normally occur in good distribution practice and which unavoidably results in change of weight or measure. The reasonableness of variations will be determined on the facts in each case (regulations).

Variations from the stated weight, measure, or numerical count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting which occur in good packing practice; however, variations shall not be permitted to such an extent that the average of the quantities in the packages comprising a shipment or stock of material 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 or stock compensates for such shortages (regulations).

Small packages are defined and exemptions provided therefor (regulations).

9. Misuse of "cents off" promotions.

No provision found.

10. Misleading quantity terminology such as "jumbo," etc.

No provision found.

GEORGIA

Code Annotated.

Regulations under the Food Act, and under weights and measures, were not available for examination.

The Georgia Food Act (§§ 42-301 et seq.) in its pertinent provisions is similar to the existing Federal act.

The only provision found with respect to commodities generally is the requirement that packages "must be plainly marked as to the net content" (§ 112-111).

Standard packages are required for flour, grits, corn meal, and other grain products (§ 42-318).

HAWAII

Revised Laws of Hawaii 1955.

No pertinent regulations available for examination.

The Hawaii Food, Drug and Cosmetic Act in its pertinent provisions is similar to the existing Federal act.

No statutory provisions dealing with commodities generally found.

Standard packages are provided for bread (§ 316-1).

IDAHO

Code (1948).

Regulations have not been promulgated under the food laws. Those under the weights and measures law were not available for examination.

The Idaho Food, Drug, and Cosmetic Act (§§ 37-113 et seq.), in its pertinent provisions is similar to the existing Federal act. Statements below relate to commodities generally.

1. Obscure net weight designation.

It is unlawful to sell, etc.—

any commodity or article of merchandise in a package or container, without having such package or container labeled in plain, intelligible words and figures, with a correct statement of the net weight, measure or numerical count of its contents.

2. Oversized packages.

No provision found.

3. Multiple packages sizes.

No provision found. Standard packages are provided for flour, cornmeal, hominy, hominy grits, bread, oleomargarine, milk, and cream.

4. Packaging to price.

No provision found.

5. Odd size packaging.

No provision found.

6. Packaging in misleading sizes and shapes.

No containers, boxes, or baskets wherein food products or other commodities are packed shall have a false bottom, false side walls, false lid or covering, or be otherwise so constructed as to facilitate the perpetration of deception or fraud (§ 71-228).

7. Use of misleading art on packages.

No provision found.

8. Misrepresenting package contents on label.

A correct statement of the net weight, measure, or numerical count is required. Excepted are packages selling for 10 cents or less, and packages sold by the aggregate net weight of the contents thereof.

There shall be taken into consideration the usual and ordinary leakage, evaporation, or waste that there may be from the time a package or container is filled by a vendor until he sells the same. A slight variation from the stated weight, measure or quantity for individual package, not to exceed 3% is permissible; provided the variation is as often above as below the weight, measure or quantity stated (§ 71-228).

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology such as "jumbo," etc.

No provision.

ILLINOIS

Statutes Annotated [Smith-Hurd].

Weights and measures law found under act of 1963.

The misbranding provisions of the Illinois food laws are similar to those of the Federal act of 1906.

1. Obscure net weight designation.

Food: An article shall be deemed to be misbranded:

If in package form, the true quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count (ch. 56½, § 9).

The label attached to a food or food product bearing the information required by law must not have the required information mixed, or printed in conjunction with descriptive or advertising matter in such a way that the required information becomes false or misleading. The required information must appear in type not smaller than 8-point Brevier caps but, however, must appear in larger type if the proportions or size of the food or food products container is so large as to require larger type to make the required information obvious (regulations).

The principal label on any package of food shall be printed plainly and legibly and the size of type, if not otherwise described, shall not be smaller than 8-point (Brevier) caps. In case the size of the package will not permit the use of 8-point caps type, the size of the type may be reduced proportionately (ch. 56½, § 38).

(b) Commodities generally:

The net quantity of the contents of any commodity in package form must be plainly and conspicuously marked on the outside of the package in terms of weight measure or numerical count (ch. 147, § 21).

2. Oversized packages.

Food:

A slack filled package constitutes a shift or device to evade the provisions of the law, even if the actual net weight, numerical count, or volume of the contents is stated on the label (regulations).

Commodities generally: The 1963 act permits Weights and Measures authorities to establish by regulation "reasonable variations to be allowed (which may include variations below the declared weight or measure caused by ordinary and customary exposure)" for net quantity statements.

3. Multiple package sizes.

No provision. Standard packages are provided for flour, meal, hominy grits, butter, oleomargarine, bread, milk, and cream.

4. Packaging to price.

Under 1963 Weights and Measures Act:

Section 25. In addition to the declarations required by Section 24 of this Act, any commodity in package form, the package being one of a lot containing random weights, measures or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure or count.

5. Odd-size packaging.

No provision found.

6. Packaging in misleading sizes and shapes.

Food: No provision found.

Commodities generally: It is unlawful to sell, etc.—

any commodity in package form if its container is so made, or formed, or if it is so wrapped, as to mislead the purchaser as to the quantity of the contents (ch. 147, § 21a).

7. Use of misleading art on package.

Food: A food is misbranded—

If the package containing it or its label shall bear any statement, design or device regarding the ingredients of the substance contained therein, which statement, design or device shall be false or misleading in any particular (ch. 56½, § 9).

Descriptive matter upon the label shall be free from any statement, design, or device regarding the article or the ingredients or character thereof or place of origin which is false or misleading in any particular. The terms "design" and "device" apply to pictorial matter of every description (regulations).

(b) Commodities generally: No provisions found.

8. Misrepresenting package contents on the label.

Food: The true quantity of the contents must be plainly and conspicuously marked on the outside of the package, provided however, that reasonable variations shall be permitted and tolerances and also exemptions as to small packages shall be established (ch. 56½, § 9).

Commodities generally: The net quantity of the contents must be plainly and conspicuously marked on the outside of the package; provided, that reasonable variations or tolerances shall be permitted (ch. 147, § 21).

There shall be no violation under this Act for any discrepancy between actual weight or volume at the time of sale to the consumer, or between the fill of container and the capacity of the container, if such discrepancy is due to unavoidable leakage, shrinkage, evaporation, waste, or to causes beyond the control of the seller acting in good faith (ch. 147, § 21(b)).

9. Misuse of "cents off" promotions.

No provisions found.

10. Misleading quantity terminology such as "jumbo," etc.

Under the Weights and Measures Act of 1963, section 24:

In relation to such declaration of net quantity, neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure or count (for example, "jumbo," "giant," "full" and the like) that tends to exaggerate the amount of commodity in a package, shall be used.

INDIANA

Statutes Annotated [Burn's].

Regulations under food law examined. Those under weights and measures not available.

The Indiana Food, Drug, and Cosmetic Act, in its pertinent provisions, and the regulations thereunder, are similar to the existing Federal act.

Statements below relate to commodities generally.

1. Obscure net weight designation.

Commodities sold in packages—

shall be so marked as to plainly indicate the net contents in terms of weight, measure or numerical count (§ 69-111).

2. Oversized packages.

No provision.

3. Multiple package sizes.

No provision. Standard packages are provided for flour, cornmeal, hominy grits, bread, small fruit and berries, butter, oleomargarine.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

No provision.

7. Use of misleading art.

No provision.

8. Misrepresenting package content on label.

No provision.

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology such as "jumbo," etc.

No provision.

IOWA

Code Annotated.

Regulations under food law examined. Those under weights and measures not available.

Pertinent provisions of the food law follow to some extent the Federal act of 1906. The act is applicable to food, commercial feed, agricultural seed, commercial fertilizer, drugs, insecticides, fungicides, paint, linseed oil, turpentine, and illuminating oil. No general provision applicable to other commodities is found.

1. Obscure net weight designation.

All articles in packaged or wrapped form which are required by this article to be labeled, unless otherwise provided, shall be conspicuously marked in the English language in legible letters of not less than eight-point heavy gothic caps on the principal label with the following items:

* * * * *

(2) The quantity of the contents in terms of measure, weight or numerical count. * * *

The above items shall be printed in such a way, that there shall be a distinct contrast between the color of the letters and the background upon which printed (§§ 189.9, 210.18).

In case the size of the package or container will not permit the size of type specified above, the same may be reduced in size proportionately in accordance with the rules of the department (§ 189.10).

2. Oversized packages.

No provision.

3. Multiple-size packages.

No provision. Standard packages are provided for bread, milk, flour, oleomargarine, and alcoholic beverages.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packing in misleading sizes and shapes.

No provision.

7. Use of misleading art.

No person shall use any label required by this title which bears any representations of any kind which are deceptive as to the true character of the article or the place of its production, or which has been carelessly printed or marked * * * (§ 189.13).

8. Misrepresenting package contents on the label.

Packages must be marked with the quantity of the contents in terms of weight, measure or numerical count. Under this requirement reasonable variations shall be permitted, and small packages excepted in accordance with rules of the department (§ 189.9(2)).

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology, such as "jumbo," etc.

No provision.

KANSAS

General Statutes (Corrick, 1949).

Regulations under food law examined. Those under weights and measures not available for examination.

The Kansas Food, Drug, and Cosmetic Act, in its pertinent provisions, and appropriate regulations, is similar to the existing Federal act. Statements below apply to commodities generally.

1. Obscure net weight designation.

Any commodity in package form must bear on the outside of the package, a definite, plain, and conspicuously printed or written declaration of the net quantity of the contents in terms of weight, measure or count (§ 83-150).

2. Oversized packages.

Containers shall not be so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package. And it is unlawful to expose for sale, etc., any commodity in any container where the contents of the container fall below such reasonable standards of fill as may have been prescribed for the commodity in question by the State sealer of weights and measures (§ 83-151).

3. Multiple package sizes.

No provision. Standard packages have been provided for flour, cornmeal, hominy grits, milk, and cream.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

A commodity must not be so wrapped, or the container so made, formed or filled as to mislead the purchaser as to the quantity of the contents of the package (§ 83-151).

7. Use of misleading art.

No provision.

8. Misrepresenting package contents on label.

Package must bear a statement of net quantity of contents. Reasonable variations or tolerances may be established, and exemptions provided for small packages (§ 83-150). It is unlawful to expose for sale, etc., a container which falls below the standard of fill established for the commodity in question (§ 83-151).

9. Misuse of "cents off" promotions.

No provision found.

10. Misleading quantity terminology such as "jumbo," etc.

No provision.

KENTUCKY

Revised Statutes [1960].

Regulations under weights and measures examined. Those under the food law not available for examination.

The Kentucky Food, Drug, and Cosmetic Act (§§ 217.005 et seq.) in its pertinent provisions is similar to the existing Federal act. Statements below relate to commodities generally.

1. Obscure net weight designation.

No person shall offer for sale, etc.—

any commodity in package form unless the net quantity of the contents be plainly and conspicuously marked on the package, in terms of weight, measure, or numerical count (§ 363.280(7)).

Regulations under this provision (KWMR 19-20) are patterned after those promulgated under the Federal Food, Drug, and Cosmetic Act and codified as 21 C.F.R. § 1.9, paragraphs 1 through 6 thereof, relating to the prominence of required statements.

2. Oversize packages.

No specific provision found. Section 363.285(2) may have some application. It reads:

No person shall sell, offer or expose for sale any commodity so packed which is misleading to the buyer as to the net weight, measure or numerical count.

3. Multiple package sizes.

No provision. Standard packages have been provided for cornmeal, grits, hominy, corn flour, wheat flour, corn flour and commercial feed.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

No provision.

7. Use of misleading art.

No provision.

8. Misrepresenting package contents on label.

Net quantity of contents must be plainly and conspicuously marked on package (§ 363.380(7)). Variations are provided for under section 363.310. The regulations (KWMR 19-14 through 18) follow closely those promulgated under the Federal Food, Drug, and Cosmetic Act for food which are codified as 21 C.F.R. § 18 (i) through (m).

9. Misuse of "cents off" promotions.

Whenever any commodity is sold, offered, exposed or advertised for sale, by weight, measure or numerical count, the price shall be indicated so as not to be misleading or deceiving to an actual or prospective purchaser (§ 363.300(1)).

Whenever any commodity or service is sold, or offered, exposed or advertised for sale, by weight, measure, or numerical count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser (regulations, 19-3).

10. Misleading quantity terminology such as "jumbo," etc.

Any qualifying or descriptive term that will tend to mislead or deceive a prospective purchaser as to the quantity of contents, shall not be used in connection with such statement of quantity (regulations, 19-10).

LOUISIANA

Revised Statutes.

Regulations under the food law, and under the weights and measures law, examined.

The State Food, Drug, and Cosmetic Law (§§ 40.601 et seq.), in its pertinent provisions, and the appropriate regulations, are similar to the existing Federal act. Statements below relate to commodities generally.

1. Obscure net weight designation.

The net quantity of the contents of any commodity in package form must be plainly and conspicuously marked on the outside of the package, in terms of weight, measure, or numerical count (title 55, § 11).

2. Oversized packages.

Regulations fixing and establishing for any commodity in package form a reasonable standard of fill of container are authorized; and it is unlawful to sell a commodity in package form if the contents fall below the prescribed standard of fill (title 55, § 11). Also, it is unlawful to sell a commodity in package form if its container is so made, formed, or filled, or if it is so wrapped, as to mislead the purchaser as to the quantity of the contents (title 55, § 11).

No container wherein commodities are packed shall be so constructed or filled, wholly or partially, as to facilitate the perpetration of deception or fraud (regulation No. 2, § C). (See also item No. 8 below.)

3. Multiple package sizes.

No provision. Standard packages are provided for flour, meal, and grits.

4. Packing to price.

No provision found.

5. Odd-size packaging.

No provision found.

6. Packaging in misleading sizes and shapes.

A container shall not be so made, formed, or filled as to mislead the purchaser, as to the quantity of contents (title 55, § 11). And no container wherein commodities are packed shall have a false bottom,

false side walls, false lid or covering, or otherwise so constructed as to facilitate the perpetration of deception or fraud (regulation No. 2, § C).

7. Use of misleading art on package.

No provision.

8. Misrepresenting package contents on label.

Net quantity of contents must be stated. However, reasonable variations or tolerances shall be permitted; and exemptions established for small packages (title 55, § 11). Discrepancies in weight due to unavoidable leakage, shrinkage, evaporation, waste, or to cause beyond the control of the vendor acting in good faith are allowed (*ibid.*).

The standard of fill for all commodities in package form shall be in equality with the net quantity statement appearing on the package; provided that—

(a) All commodities, weighing 4 avoirdupois ounces or over, may be allowed a tolerance equal to 1 percent of the established weight.

(b) All bakery commodities in baked form, weighing 4 ounces or over, may be allowed a tolerance equal to 2 percent of the established weight.

(c) All commodities, measuring 8 fluid ounces or over, or one-half pint or over, may be allowed a tolerance equal to one-half of 1 percent of the established measure.

(d) The application of these tolerances shall not be in excess of 20 percent of the packages in any lot or lots of such commodity, with variations as often above as below the standard of marked quantity (regulation No. 3).

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology such as "jumbo," etc.

In connection with the weight, measure or numerical count, no qualifying word, phrase, or clause shall be used; a statement such as "not less than," "average," "when packed," or a statement that the contents are "between" certain limits, is not permissible.

MAINE

Revised Statutes, 1954.

Regulations under food law, and under weight and measures law, have not been promulgated in areas of interest to this study.

The Maine Food Law (ch. 32, §§ 216–228A), in its pertinent provisions, is similar to the existing Federal act. Statements below apply to commodities generally.

1. Obscure net weight designation.

Any commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declaration of the net quantity of the contents in terms of weight, measure, or count (ch. 32A, § 26).

Whenever an advertised, posted or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of, the numerals representing the whole cents (32A, § 31).

2. Oversized packages.

The State sealer is authorized to prescribe reasonable standards of fill for any commodity in package form (ch. 32A, § 8). No com-

modity in package form shall be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package (ch. 32A, § 28).

3. Multiple package sizes.

No provision. Standard packages have been provided for butter, oleomargarine, margarine, fluid dairy products, flour, corn meal, hominy grits, berries, and small fruit.

4. Packing to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package (ch. 32A, § 28).

7. Use of misleading art.

No provision.

8. Misrepresenting package contents on label.

The net quantity of the contents in terms of weight, measure, or count must be stated. Reasonable variations on tolerances shall be established and allowed, and exemptions provided for small packages, and commodities put up in variable weights or sizes for sale intact, and not customarily weighted or measured at time of sale to consumer (ch. 32A, § 26).

9. Misuse of "cents off" promotions.

Whenever any commodity or service is sold, etc., by weight, measure or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser (ch. 32A, § 31).

10. Misleading quantity terminology, such as "jumbo," etc.

Neither the qualifying term "when packed," or words of similar import, nor any term qualifying a unit of weight, measure, or count, such as "jumbo," "giant," "full," or the like, that tends to exaggerate the amount of the commodity shall be used in connection with the declaration required by subsection I, or in the advertisement of a commodity. The term "advertisement" means all representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of the commodity (32A, § 26).

MARYLAND

(Annotated Code.)

Regulations under food law, and weights and measures, not available for examinations.

Provision of the food law setting forth the conditions under which food is deemed to be misbranded are similar to the existing Federal act of 1906.

1. Obscure net weight designation.

Food: Food in package form must have the quantity of the contents plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count (art. 43, § 190).

Commodities generally: Any commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declara-

tion of the net quantity of the contents in terms of weight, measure, or count (art 97, § 19).

2. Oversize packages.

Food: No provision.

Commodities generally: No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package (art. 97, § 20).

3. Multiple package sizes.

No provision. Standard packages have been provided for butter, oleomargarine, margarine, fluid milk, cream, buttermilk, flour, cornmeal, berries, and small fruit.

4. Packaging to price

No provision found.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

Food: No provision.

Commodities generally: A commodity in package form shall not be so wrapped, nor shall it be in a container so made, formed, or filled, as to mislead the purchaser as to the quantity of the contents of the package (art. 97, § 20).

7. Use of misleading art on package.

Food: A food is misbranded if its label bears any statement, design, or device which shall be false or misleading in any particular (art. 43, § 190).

Commodities generally: No provision.

8. Misrepresenting package contents on the label.

Food: The quantity of the contents must be plainly and conspicuously marked on the outside of the package. Reasonable variations shall be permitted and tolerances and also exemptions as to small packages shall be established (art. 43, § 190).

Commodities generally: A commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declaration of the net quantity of the contents. Reasonable variations or tolerances shall be allowed and also exemptions as to small package (art. 97, § 19).

9. Misuse of "cents off" promotions.

Food: No provision.

Commodities generally: Whenever any commodity or service is sold, etc., by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser (art. 97, § 23).

10. Misleading quantity terminology.

No provision.

MASSACHUSETTS

General Laws.

Regulations under weights and measures not available. Regulations under the food law "in most instances follow the regulations of the Food and Drug Administration."

Definitions of misbranding under the food laws are similar to the existing Federal law.

There is no law for the labeling of commodities generally.

In connection with the requirement for marking net quantity of food packages the law provides that—

No person shall himself or by his agent or servant sell or offer for sale at retail any meat, poultry or edible fish, except soft shell clams and oysters, in package form unless there is plainly and conspicuously marked on the outside of such package the price per pound of the contents and total sales price (Gen. Laws, ch. 94, § 181).

Standard packages have been provided for bread, flour, meal, hominy grits, lime, and viscous or semisolid commodities.

MICHIGAN

Annotated Statutes.

Regulations for various food examined.

The definitions of misbranding are similar to those of the Federal act of 1906. No general provision for the labeling of commodities found. Statements below relate to food.

1. Obscure net weight designation.

Food in package form is misbranded if the container does not bear the true weight stated in terms of pounds, ounces and grains, or pounds and decimals or fractions thereof, avoirdupois weight or the true net measure, which measure, in case of liquids shall be in terms of gallons, or fractions there, as quarts, pints, and ounces or the true numerical count, as the case may be, expressed on the face of the principal label in plain English words or numerals, so that it can be plainly read (§ 12.874).

2. Oversized packages.

No provision.

3. Multiple size packages.

No provision. Standard packages have been provided for flour, cornmeal, hominy grits, bread, milk, and cream.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

No provision.

7. Use of misleading art on packages.

A food is misbranded if the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular (*ibid.*).

8. Misrepresenting package contents on label.

The true net weight of the package must be stated (see item 1 above). Reasonable variations shall be permitted and tolerances therefor and also exemptions as to small packages shall be established (*ibid.*).

Variations from the stated weight or measure shall be permitted when caused by ordinary and customary exposure to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or measure.

Variations from the stated weight, measure, or numerical count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting individual packages which occur in good packing practice.

Under Section 22 above, variations shall not be permitted to such extent that the average of the quantities in the packages comprising a lot, shipment, or other delivery of food is below the quantity stated, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same lot, shipment, or delivery compensate for such shortage.

The extent of variations from the stated quantity of the contents permissible under Sections 1, 2, and 3 of this regulation in the case of each lot, shipment, or other delivery shall be determined by the facts in such case (regulation No. 526).

9. Misuse of "cents off" promotions.

No provisions.

10. Misleading quantity terminology such as "jumbo," etc.

No provision.

MINNESOTA

Annotated Statutes.

Regulations under food law examined.

The misbranding provisions of the food law are similar to those of the Federal Act of 1906. No general provision for the labeling of commodities found. Statements below relate to food.

1. Obscure net weight designation.

Food in package form is misbranded if the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of net weight, measure, or numerical count (§ 31.01(5)).

Regulation 13(a) is to the same effect as the above; and regulation 2(d) provides that the mandatory information be printed in type not smaller than 8-point capitals with the proviso that in case the size of the package will not permit the use of 8-point type, the size of the type may be reduced proportionately.

2. Oversized packages.

No specific statutory provision found; however, the Commissioner of the Department of Agriculture states that—

slack filled packages are deemed to be in violation of the misbranding section of the statutes—

and that—

such packages are not permitted to be sold in the State.

3. Multiple package sizes.

No provision. Standard packages have been provided for bread, flour meal, and hominy grits.

4. Packaging to price.

No provision found.

5. Odd-size packaging.

No provision found.

6. Packaging in misleading sizes and shapes.

No provision found.

7. Use of misleading art on packages.

Food in package form, the package or label of which bears any statement, design, or device regarding such article or the ingredients or substances contained therein, which shall be false or misleading in any particular is deemed misbranded (§ 31.01).

The label shall be free from any statement, design or device regarding the article or the ingredients or substances contained therein which is false or misleading in any particular. The terms "design" and "device" include abbreviations, characters, signs, and pictorial matter of any description (regulation 2(e)).

A food product shall not be labeled or branded in such a manner as to deceive or mislead the purchaser. Direct misstatements and indirect misrepresentations regarding the article or its ingredients by means of designs, devices, or artifices in the arrangement, style, or dress of the package, or in the arrangement of the printed or pictorial matter in or upon the label or package are prohibited (regulation 2(g)).

8. Misrepresenting package contents on label.

Quantity of contents must be plainly and conspicuously marked on outside of package. Reasonable variations may be permitted, and tolerances, and also exceptions as to small packages may be established (§ 31.01).

Allowed are discrepancies due exclusively to errors in weighing, measuring, or counting which occur in packaging conducted in compliance with good commercial practice; and discrepancies due exclusively to differences in the capacity of bottles and similar containers, resulting solely from unavoidable difficulties in their manufacture; and discrepancies due exclusively to differences in atmospheric conditions in various places, and which unavoidably result from the ordinary and customary exposure of the package to evaporation or to the absorption of water (regulation 13(i)).

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology such as "jumbo," etc.

No provision.

MISSISSIPPI

Code [1942].

Regulations not available for examination.

The misbranding provisions of the food law are similar to those of the Federal act of 1906. No general provisions under weights and measures found. Statements below relate to food.

1. Obscure net weight designation.

An article shall be deemed to be misbranded—

If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package (7112).

2. Oversized packages.

No provision.

3. Multiple package sizes.

No provision. Standard packages have been provided flours, meals, hominy, and grits.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packing in misleading sizes and shapes.

No provision.

7. Use of misbranding art.

A food is misbranded if the package containing it or its label shall bear any statement, design, or device regarding the ingredients of the substances contained therein, which statement, design, or device shall be false in any particular (§ 7111).

8. Misrepresenting package contents on label.

If the contents are stated in terms of weight or measure they must be plainly and correctly stated on the outside of the package (§ 7112).
No provision found for variations.

9. Misuse of "cents off" promotions.

No provisions.

10. Misleading quantity terminology such as "jumbo," etc.

No provision.

MISSOURI

Annotated Statutes [Vernon's].

Regulations under the food law (§ 196.010 et seq.), and under weights and measures, examined.

The food law in its pertinent provisions and regulations are similar to the existing Federal act. Statements below relate to commodities generally.

1. Obscure net weight designation.

Any commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declaration of the net quantity of the contents in terms of weight, measure, or count (§ 413.265).

Regulations promulgated under this section relating to the prominence of declarations (regulation No. 4 (15)) are similar to those promulgated under the Federal Food, Drug, and Cosmetic Act (21 C.F.R. § 1.8 subsections 1 through 6).

2. Oversized packages.

Regulations prescribing reasonable standards of fill for any commodity in package form are authorized (§ 413.335). No commodity in package form shall be so filled as to mislead the purchaser as to the quantity of the contents (§ 413.415). And the contents of a container shall not fall below such reasonable standards of fill as may have been prescribed for the commodity in question (*ibid*).

3. Multiple package size.

No provisions. Standard packages have been provided for flour, cornmeal, hominy grits, bread, butter, oleomargarine, margarine, fluid dairy products, berries, and small fruit.

4. Packing to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

A commodity in package form shall not be so wrapped, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package (§ 413.415).

7. Use of misleading art on package.

No provision.

8. Misrepresenting package contents on label.

A commodity in package form shall bear a declaration of the net quantity of the contents in terms of weight, measure, or numerical count. Reasonable variations or tolerances shall be allowed, and exemptions provided for small packages, and commodities put up in variable sizes for sale to the consumer intact and customarily not sold as individual units, or weighed or measured at time of sale to consumer (§ 413.265). Pertinent regulations (regulation No. 4 (8) through (13)) follow generally those of the Federal Food, Drug, and Cosmetic Act (21 C.F.R. § 1.8 (i) through (m)).

9. Misuse of "cents off" promotions.

When any commodity or service is sold by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser (§ 413.420).

10. Misleading quantity terminology such as "jumbo," etc.

* * * the qualifying term "when packed," or words of similar import, shall not be used in connection with the declaration required under the provisions of this section.

This is section 413.265 relating to the required declaration of the net quantity of contents. The language quoted does not appear broad enough to ban the practice under consideration.

MONTANA

Revised Codes Annotated [1947].

Regulations under food law and under weights and measures not available for examination.

The food law is similar to the Federal act of 1906.

1. Obscure net weight designation.

Food: A food is misbranded—

If in the package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package (§ 27-109).

Commodities generally: It is unlawful to sell any commodity or article of merchandise in a package or container, without having such package or container labeled in plain, intelligible words and figures, with a correct statement of the net weight, measure, or numerical count of its contents designated where not otherwise provided, by lettering of at least $\frac{1}{8}$ inch in height (8-point type) (§ 90-132).

2. Oversized packages.

No provision.

3. Multiple package sizes.

No provision. Standard packages have been provided for bread, butter, oleomargarine, milk, cream, and liquor.

4. Packaging to price.

No provision.

6. Packaging in misleading sizes and shapes.

Food: See below.

Commodities generally:

No containers, boxes, or baskets wherein food products or other commodities are packed shall have a false bottom, false side walls, false lid or covering, or be otherwise so constructed as to facilitate the perpetration or deception of fraud (§ 90-132(4)).

7. Use of misleading art on package.

Food: The term "misbranded" applies to all articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular.

Commodities generally: No provision.

8. Misrepresenting package contents on label.

Food: If contents are stated in terms of weight or measure, they must be correctly stated on the outside of the package.

Commodities generally: A correct statement of the net weight, measure, or numerical count of package contents is required.

There shall be taken into consideration the usual and ordinary leakage, evaporation, or waste that there may be from the time a package or container is filled by a vendor until he sells the same. A slight variation from the stated weight, measure or quantity for individual packages not to exceed 3% is permissible; provided that the variation is as often above as below the weight, measure or quantity stated (§ 90-132).

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology such as "jumbo," etc.

No provision.

NEBRASKA

Revised Statutes.

Regulations under food law and weights and measures not available for examination.

The law relating to the misbranding of food is similar to the Federal act of 1906. The Weights and Measures Law contains no provisions relating to the packaging of commodities in general. Statements below relate to food.

1. Obscure net weight designation.

An article shall be deemed to be misbranded in the case of food—

If in package form, if each package does not have a correct statement, clearly printed on the outside of the package, of the contents and the quantity of the contents in terms of weight, measure or numerical count (§ 81-206).

2. Oversized packages.

No provision.

3. Multiple package sizes.

No provision. Standard packages have been provided for bread, butter, flour, milk, cream, and liquors.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

An article shall be deemed to be misbranded in the case of food—

* * * if it is in a container so made, formed or shaped as likely to deceive or mislead the purchaser as to quantity, quality, size, kind or origin of the food therein (§ 81-206).

7. Use of misleading art on package.

The term "misbranded" applies to all articles of food, the package or label of which shall bear any statement, design, or device regarding such article or the ingredients or substance contained therein which shall be false or misleading in any particular (§ 81-206).

8. Misrepresenting package contents on the label.

Food in package form must bear a correct statement of the contents and the quality of the contents in terms of weight, measure, or numerical count. No provision for variation found.

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology, such as "jumbo," etc.
No provisions.

NEVADA

Revised Statutes.

Regulations under the food law, and weights and measures, not available for examination.

The Nevada Food, Drug, and Cosmetic Act (§§ 585.010 et seq.) in its pertinent provisions, is similar to the existing Federal act. Statements below relate to commodities generally.

1. Obscure net weight designation.

1. It shall be unlawful for any person to put up any commodity or article of merchandise into a package or container and sell or offer for sale in this State such commodity or article of merchandise in that form without having such package or container labeled in plain intelligible English words and figures with a correct statement of the net weight, measure or numerical count of its contents.

2. Nothing in this section shall:

* * * * *

(b) Apply to packages or containers in which soap in any form is sold or offered for sale (§ 581.300).

2. Oversized packages.

The sale of any commodity in a container complying with any Act of Congress or the opinions and regulations issued by the Secretary of Agriculture and appertaining to net weight or measure does not violate the provisions of this chapter (§ 581.350).

There shall be no violation under this chapter for any discrepancy between actual weight or volume at the time of sale to the consumer and the weight marked on the container, or between the fill of the container and the capacity of the container, if such discrepancy due to unavoidable leakage, shrinkage, evaporation, waste or to causes beyond the control of the seller acting in good faith (§ 581.360).

3. Multiple package sizes.

No provision. Standard packages have been provided for milk, bread, butter, oleomargarine, flour, cornmeal, hominy, berries, and small fruits.

4. Packaging to price.

No provision.

6. Packaging in misleading sizes and shapes.

No container wherein commodities are packed shall have a false bottom, false side walls, false lid or covering, or be otherwise so constructed, wholly, or partially, as to facilitate the perpetration of deception or fraud (§ 581.340).

7. Use of misleading art.

No provision.

8. Misrepresenting package contents on label.

A commodity in package form must bear a correct statement of net weight, measure, or numerical count.

For permissible variations see the text of § 581.360 set forth above under item 2.

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology, such as "jumbo," etc.

No provision.

NEW HAMPSHIRE

Revised Statutes Annotated.

Regulations under food law not available for examination. Those under weights and measures examined.

The State Food, Drug, and Cosmetic Act (§§ 146.1 et seq.) as it relates to misbranding of food is similar to the existing Federal act. Statements below pertain to commodities generally.

1. Obscure net weight designation.

It shall be *unlawful* for any person to sell or offer for sale any commodity in package form unless the contents thereof is expressed in terms of net weight, measure or numerical count in a conspicuous place on the outside of the package, in a plainly printed statement in large type.

All markings on containers must be on the top or side and must not be obscured in any way (regulations).

2. Oversized packages.

No provision.

3. Multiple package sizes.

No provision. Standard packages have been provided for flour, cornmeal, and hominy grits.

4. Packing to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

No provision.

7. Use of misleading art.

No provision.

8. Misrepresenting package contents on label.

A commodity in package form must bear a statement of the contents expressed in terms of net weight, measure, or numerical count. Reasonable variations or tolerances as provided in section 55 and also exemptions as to small packages shall be established by rules and regulations (§ 359.30).

Variations in all commodities unless otherwise stated in the regulations shall be as often above as below (regulations).

The average weight, measure, or count of the contents of a reasonable number of packages must fully equal the weight, measure or count stated on each package. There is no tolerance or allowance for any deficiency whatever in average weight (regulations).

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology such as "jumbo," etc.

In connection with the weight, measure or numerical count, no qualifying word, phrases, or clause shall be used; a statement such as "minimum" "not less than", "average", "when packed", or a statement that the contents are "over" a certain amount or a statement that the contents are "between" certain limits, is not permissible (regulations).

NEW JERSEY

Statutes Annotated.

Regulations under food law examined. Regulations under weights and measures law dealing with various commodities examined.

The food law in its pertinent provisions appears to follow, with amendments, the Federal act of 1906. There is no provision for the labeling on commodities generally.

1. Obscure net weight designation.

The marking of food in package form is provided for by § 51:1-29 of the weights and measures law and reads in part as follows:

Sale of food in package form; marking; permissible tolerances:

No person shall distribute or sell, or have in his possession with intent to distribute or sell, any article of food in package form, unless the net quantity of the contents be plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count.

Reasonable variations, tolerances and exemptions as to small packages shall be permitted. The state superintendent shall by order fix such tolerances and exemptions as to small packages as shall have been or may hereafter be fixed by the secretary of the treasury, the secretary of agriculture and the secretary of commerce of the United States of America.

Such tolerances and exemptions shall be published at the end of the session laws of the legislature next thereafter published after the making of said order and shall take effect when so published.

If any such tolerance or exemption, so adopted, shall be changed by the three secretaries above named, it shall not continue in effect in this state after such change has become effective.

Regulations No. 36 of the Department of Weights and Measures provides for the sale, marking, etc., of facial and cleansing tissues. Since there was testimony before the committee on labeling of paper goods this regulation is set forth here:

On and after July 1st, 1943, facial and cleansing tissues shall be sold by numerical count, and the quantity shall be declared on the wrapper or container in a plain and conspicuous manner.

The quantity declaration shall include a statement of the single sheet count and of the "tissue" count expressed in terms of the number of "plies" or single sheets comprising a "tissue", and the sheet size shall be specified.

Statements of sheet count and tissue count shall be equally prominent and of the same size lettering, and all three statements shall be in immediate juxtaposition, thus comprising a complete declaration.

Wherever, on a carton or label, a statement of sheet count is made, this shall be accompanied by the corresponding "tissue" count and the sheet size.

The term "sheet" as used herein shall mean the separate, individual sheet of tissue.

The term "tissue" shall mean whatever combination of individual sheets may comprise a "usable Unit", "pull-out", or any combination dispensed from a container or removable from a roll or package in a single operation.

An example of a declaration conforming to the requirements of this Regulation is as follows:

500 single sheets
250 two-ply tissues
Size: 9"x10"

Similarly informative declarations shall be utilized on all packages of tissues covered by this Regulation.

Folded facial tissues shall be compactly folded and gaps between the edges of sheets shall be held to a minimum.

Cartons in which facial and cleansing tissues are packed shall not be larger than needed to hold their intended or represented contents.

The above regulations were promulgated under the provisions of Section 51:1-61 of the Revised Statutes relating to weights and measures, which reads as follows: "Rules for sale of commodities. The State Superintendent may make rules and regulations which shall govern the sale of commodities."

2. Oversized packages.

A food is misbranded if its container is so filled as to be misleading (§ 24:5-17).

3. Multiple package sizes.

No provision. Standard packages have been provided for charcoal, milk, cream, ice cream, frozen products, berries, and small fruits.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

A food is misbranded if its container is so made or formed or filled as to be misleading (§ 24:5-17).

7. Use of misleading art on packages.

The term "misbranded" applies to all articles of food:

The package or label of which shall bear any statement or design regarding such article or the ingredients or substances contained therein, which shall be false or misleading in any particular * * * (§ 24-5-16).

8. Misrepresenting package contents on label.

The net quantity of the contents must be marked on the outside of the package.

Reasonable variations and tolerances and exemptions as to small packages shall be permitted * * * (See item 1 above.)

9. Misuse of "cents off" promotions.

No Provision.

10. Misleading quantity terminology such as "jumbo," etc.

No provision, although precedent for outlawing on grounds of not conforming to any recognized standard.

NEW MEXICO

Regulations under the food law are the same as under the Federal act.

Regulations under weights and measures not available for examination.

The food law, in its pertinent provisions, is similar to the existing Federal act. Statements below relate to commodities generally.

1. Obscure net weight designation.

Except as otherwise provided by law, a commodity in package form, except bread, shall bear on the outside of the package a definite, plain, and conspicuous declaration of net quantity of the contents in terms of weight, measure, or count, * * * (§ 76-1-39).

2. Oversized packages.

It shall be the duty of the State superintendent of weights and measures to issue regulations for reasonable standards of fill for a commodity in package form. No commodity in package form shall be so wrapped nor be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of its contents, and the contents of a container shall not fall below the reasonable standard of fill as may have been prescribed for the commodity by the Superintendent § 76-1-40.

3. Multiple package size.

No provision. Standard packages have been provided for bread, butter, oleomargarine, margarine, milk, cream, flour, cornmeal, hominy grits, berries, and small fruits.

4. Packaging to price.

No Provision.

5. Odd-size packaging.

No Provision.

6. Packaging in misleading sizes and shapes.

No commodity in package form shall be so wrapped, nor be in a container so made, formed or filled as to mislead the purchaser as to the quantity of its contents * * * (§ 76-1-40).

7. Use of misleading art on package.

No Provision.

8. Misrepresenting package contents on the label.

A commodity in package form shall bear a declaration of the net quantity of the contents in terms of weight, measure, or count. Reasonable variations or tolerances and exemptions are to be allowed for small packages under regulations of the Superintendent of Weights and Measures (§ 76-1-39).

9. Misuse of "cents off" promotions.

Whenever a commodity or service is sold * * * by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner, calculated or tending to mislead or deceive a purchaser (76-1-41).

10. Misleading quantity terminology such as "jumbo," etc.

No qualifying term "when packed", or words of similar import shall be used (§ 76-1-39).

This does seem broad enough to cover the practice under consideration.

NEW YORK

Regulations under food law, and under weights and measures, available for examination.

The food law in its pertinent provisions (Agriculture and Markets Law, § 201) is similar to the existing Federal act. Two exceptions are noted. No provision is found (1) conferring authority to prescribe reasonable standards of fill, or (2) requiring that food in package form bear a declaration of net contents in terms of weight, measure, or numerical count. These factors may or may not be covered under general weights and measures provisions. Statements below relate to commodities generally. Pertinent regulations are promulgated as part 221 of the Rules and Regulations of the Department of Agriculture and Markets pertaining to Weights and Measures.

1. Obscure net weight designation.

When commodities are sold or offered for sale in containers whose sizes are not otherwise provided by statute, the net quantity of the contents of each container shall be plainly and conspicuously marked, branded or otherwise indicated on the outside or top thereof or on a label or a tag attached thereto in terms of weight, measure or numerical count as may be prescribed by the commissioner; provided, however, that reasonable variations shall be permitted (Ibid. § 194).

221.15 Butter. (a) Butter in prints shall be marked in terms of pounds or ounces in bold-faced letters at least three-sixteenths of an inch in height, the maximum variation allowed on a pound print to be three-eighths of an ounce on an individual print, provided that the average error of twelve prints, taken at random, shall not be over one-fourth of an ounce per pound; the maximum variation allowed on two-pound prints to be one-half ounce, provided that the shortage on twelve prints, taken at random, be not more than three-eighths of an ounce for two pounds.

Prints that are not 1 pound or 2 pounds must be marked in letters at least three-eighths of an inch in height, giving the correct weight in terms of ounces or pounds and ounces.

(b) Butter in crocks or tubs. The maximum variation allowed will be one per cent (1%).

221.20 *Commodities in glass bottles or jars.* (a) Commodities in glass bottles shall show the contents in one of the following ways:

(1) The contents in terms of gallons, quarts, pints, or half pints, or in terms of fluid ounces, may be blown in the side or neck of the bottle. Such letters shall be at least three-eighths of an inch ($\frac{3}{8}$ ") in height for bottles containing six ounces or over and one-fourth of an inch ($\frac{1}{4}$ ") for bottles containing over two fluid ounces but less than six fluid ounces, and must be exposed; that is, must not be covered by a label or other covering.

(2) the contents of the bottle may be stated in terms of weight or of fluid measure, the weight being indicated in terms of pounds and ounces and the fluid measure being indicated in terms of gallons, quarts, pints, half-pints, or gills or fluid ounces. When contents are liquid, the amount should not be stated in terms of weight, the marking to be on a tag attached to the bottle or upon a label. The letters shall be in bold-faced type at least one-ninth of an inch ($\frac{1}{9}$ ") in height for bottles or jars having a capacity of gill, half-pint, pint or multiples of a pint, and letters at least three-sixteenths of an inch ($\frac{3}{16}$ ") in height for bottles of other capacities, on a part of the tag or label free from other printing or ornamentation, leaving a clear space around the marking which indicates the contents.

(3) If the marking is etched or ground in the surface of the bottle, the letters and figures shall be at least one-quarter of an inch ($\frac{1}{4}$ ") in height, the manner of expressing the contents being the same as those indicated in (1) and (2) above.

221.30 Commodities which appear as a unit in the state of nature may be sold either by weight, measure or numerical count. When the numerical count is more than six, the container must be marked in letters at least half as large as the largest printing on the side or top of the package on which the indication appears, or where no other printing is present, in letters at least one-fourth of an inch ($\frac{1}{4}$ ") in height.

2. Oversized packages.

221.1. *General regulations*

(f) In connection with the weight, measure or numerical count, no qualifying word, phrase or clause shall be used; a statement such as "minimum," "not less than," "average," "when packed," or a statement that the contents are "over," a certain amount, or a statement that the contents are "between," certain limits, is not permissible.

3. Multiple package sizes.

No provision. Standard packages have been provided for bread, flour, meal, milk, cream, frozen desserts, beer, ale, porter.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

No provision.

7. Use of misleading art on packages.

No provision.

8. Misrepresenting package contents on label.

Reasonable variations shall be permitted. See item 1 above for text of pertinent section. And the Commissioner of the Department of Agriculture and Markets is authorized to establish uniform tolerances.

NORTH CAROLINA

General Statutes.

Regulations under the food law shall conform insofar as practicable with those promulgated under the Federal act. Regulations under weights and measures examined.

The food law in its pertinent provisions is similar to the existing Federal act. Statements below relate to commodities generally.

1. Obscure net weight designation.

It shall be unlawful to keep for the purpose of sale, or expose for sale, or sell any commodity in package form unless the net quantity of the contents are plainly or conspicuously marked on the outside of the package in terms of weight, measure or numerical count * * * (§ 81-15).

The words "plainly and conspicuously marked" as used in this section shall be construed to mean that the principal label shall indicate the net weight contents by legend as plain and conspicuous other legend thereon and as likely to be read as any other legend, and shall not be obscured by crowding or by color or by other legend (ibid).

Regulations require—

(1) That the net content declaration appear on the principal label, main panel, or face, preferably at the top, in a contrasting color and not be obscured by crowding or by color or by other legend. Said label, panel, or face being the one which is customarily displayed by the vendor within view of a prospective purchaser.

(2) That the letters or figures that comprise the net content declaration be of a height not less than 3 percent of the height of the package or $\frac{1}{8}$ inch, whichever is greater.

An amendment to item 2 above added the following—

up to and including 1 inch and optional in excess of 1 inch.

2. Oversized Packages.

It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell, any commodity in package form when said package is so made, or formed, or filled, or wrapped, or exposed, or marked, or labeled as to mislead or deceive the purchaser as to the quantity of its contents (§ 81-14.3).

Regulations of June 22, 1961, provide that:

A package is deceiving when the named contents therein occupies less than 90% of the enclosed volume of the package exclusive of any wrapping or other material attached or included therewith; provided that the principal label shall indicate the net weight of contents by legend as plain and conspicuous as any other legend thereon, and as likely to be read as any other legend, and shall not be obscured by crowding, or by color, or by any other legend.

A supplement to the above regulation dated August 23, 1961, states:

* * * It has come to the attention of this office that certain commodities, due to shape, size, and physical characteristics, settles more than 10% after packaging. In order to reduce to a minimum the chances of so filling a package as to be deceptive according to law, it, therefore, is recommended that no carton or container be used in prepacking a commodity, which has a volume in excess of that which is absolutely necessary to receive and retain a quantity commensurate with that which is declared on the principal label of the package * * * having been filled in accordance with good commercial practice and without damage to the product in the packaging process.

If carton or container is filled in accordance with this recommendation, and the settling or shrinkage thereafter is in excess of 10%, the reasonableness of such shrinkage will be determined according to the facts in each case.

3. Multiple package sizes.

No provision. Standard packages have been provided for flour, meal, grits, hominy, bread, fertilizer, commercial feeding stuffs, milk, and milk products.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packing in misleading sizes and shapes

A package shall not be so made, formed, etc., as to mislead or deceive the purchaser (§ 81-143.3). See item 2 above for the text of this section.

7. Use of misleading art on package.

No provision.

8. Misrepresenting package contents on label.

Net quantity of contents must be stated on package in terms of weight, measure, or numerical count. Reasonable variations or tolerances shall be permitted, and exemptions as to small packages established by regulations of the Department of Agriculture (§ 81-15).

Tolerances and variations allowed:

(1) Discrepancies due exclusively to errors in weighing, measuring, or counting which occur in packing conducted in compliance with good commercial practice.

(2) Discrepancies due exclusively to differences in the capacity of bottles and similar containers, resulting solely from unavoidable difficulties in manufacturing such bottles or containers so as to be uniform capacity.

(3) Discrepancies in weight or measure due exclusively to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of the package to evaporation or to the absorption of water.

Discrepancies under 1 and 2 above shall be as often above as below the marked quantity. The reasonableness of discrepancies under 3 above will be determined on the facts in each case (rules and regulations, § 6-20).

9. Misuse of "cents off" promotions.

No provision.

10. Use of misleading terminology such as "jumbo," etc.

No provision.

NORTH DAKOTA

Code annotated [1960].

Regulations under food law, and weights and measures, not available for examination.

The misbranding provisions of the food law are similar to the existing Federal act with some exceptions. No provision found dealing with commodities generally. Provisions below relate to food.

1. Obscure net weight designation.

A food is misbranded—

When the article is in package form, if the name of the article together with the quantity of the contents in terms of weight, measure, or numerical count are not plainly and conspicuously marked on the outside of the package (§ 19-02-07(5)).

2. Oversized packages.

No specific provision; however, the department may in order to prevent fraud and deception establish and enforce rules and regulations relative to the size, weight, or style of package of all food commodities except lard and bread (§ 19-02-13).

3. Multiple package sizes.

No specific provision; but see item 2 above.

Standard packages have been provided for flour, cornmeal, grits, and oleomargarine.

4. Packing to price.

No specific provision. Item 2 above may have relevancy.

5. Odd-size packaging.

No specific provision; but see item 2 above.

6. Packaging in misleading sizes and shapes.

No person shall sell, etc., any article of food in any package or container, the size or shape of which may deceive or tend to deceive the purchaser of such product as to the contents of the package or container (§ 19-02-14).

7. Use of misleading art on package.

A food is misbranded—

If the package containing the food, or the label thereon, shall bear any statement, design, or device regarding the ingredients or substances contained therein which is false or misleading in any particular (19-02-07(7)).

8. Misrepresenting package contents on label.

Food in package form must bear a statement of the quantity of the contents in terms of weight, measure, or numerical count. No specific provision for standards of fill, variation, and exemptions was found.

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology such as "jumbo," etc.

No provision.

OHIO

Revised Code Annotated [Pages].

Regulations under food law and under weight and measures not available for examination.

The food law (§ 3715.01, et seq.) in its pertinent provisions, is similar to existing Federal law.

The packaging section of the weights and measures law is old and obsolete with respect to areas of interest covered by this study.

1. Obscure net weight designation.

A commodity in package form must have marked—

thereon in plain letters and figures the exact quantity off the contents thereof in terms of weight, measure, or numerical count (§ 1327.43).

2. Oversized packages.

No provision.

3. Multiple package sizes.

No provision. Standard packages have been provided for milk, flour, meal, grits, bread, berries, small fruits, beer, and intoxicating liquor.

4. Packing to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

No provision.

7. Use of misleading art.

No provision.

8. Misrepresenting package contents on label.

Exact quantity of contents must be marked on package. Reasonable tolerances and variations and also exemptions as to small packages shall be established by regulations made by the Secretary.

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology.

No provision.

OKLAHOMA

Statutes Annotated [List, 1952]

Regulations under food laws examined. Those under weights and measures not available for examination.

The food law, in its pertinent provisions, and the regulations thereunder are similar to the existing Federal Law. Provisions relating to the sale of commodities in package form apparently are applicable only to agricultural products (§§ 2:5-43, 83-84).

1. Obscure net weight designation.

It shall be unlawful to keep for the purpose of sale, or to offer or expose for sale, any commodity in package form unless the net quantity of the contents be plainly and conspicuously marked on the outside of the package, in terms of weight, measure or numerical count (§§ 2:5-43; 83:84).

2. Oversized packages.

It shall be unlawful to keep for the purpose of sales * * * any commodity in package form if its container is so made, formed or filled * * * as to mislead the purchaser as to the quantity of the contents or if the contents of its container fall below the standards of fill prescribed by regulations promulgated as provided in this section (§§ 2:5-43; 83:84).

3. Multiple package sizes.

No provision. Standard packages have been provided for flour, meals, and hominy grits.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

A container must not be so made, formed, filled, or wrapped as to mislead the purchaser as to the quantity of the contents (§§ 2:5-43).

7. Use of misleading art.

No provision.

8. Misrepresenting package contents on label.

Net quantity of contents must be marked on outside of package in terms of weight, measure, or numerical count. A discrepancy between actual weight or volume at the time of sale to the consumer and the weight marked on the container or between the fill of container and the capacity of the container is permitted if such discrepancy is due to unavoidable leakage, shrinkage, evaporation, waste, or causes beyond the control of the seller acting in good faith (§§ 2:5-43, 83-84). Under section 83:84 reasonable variations or tolerances and also exemptions as to small packages shall be established by rules and regulations made by the State Board of Agriculture.

9. Misuse of "cents off" promotions.

It shall be unlawful to represent the price of any commodity, thing or service in any manner calculated or tending to mislead or deceive an actual or prospective customer (§§ 2:5-45, 83:86).

10. Misleading quantity terminology, such as "jumbo," etc.
No provision.

OREGON

Revised Statutes.

Regulations under the food law, and under weights and measures, not available for examination.

The food law (§§ 616.005 et seq) in its pertinent provisions is essentially the same as the existing Federal act. Differences are noted with respect to permissible variations, and statement of quantity.

1. Obscure net weight designation.

Food: A food is misbranded if in package form unless it bears a label containing—

an accurate and informative statement of the quantity of the contents in terms of weight, measure or numerical count (§ 616.250(5)).

Prominence of information on label follows the requirement of the Federal act (§ 616.250(6)).

Commodities generally: No persons shall sell any commodity in package form—

unless the net quantity of the contents is plainly and conspicuously marked on the outside of the package, in terms of weight, measure or numerical count. (§ 618.160).

2. Oversized packages.

Food: A food is misbranded if its container is so filled as to be misleading (§ 616.250(4)).

Commodities generally: No similar provision.

3. Multiple package sizes.

No provision. Standard packages have been provided for bread, flour, ice cream, and other frozen desserts.

4. Packaging to price.

No provision.

5. Odd-size packages.

No provision.

6. Packaging in misleading sizes and shapes.

Food: A food is misbranded—

if its container is so made, formed or filled as to be misleading (§ 616.250(4)).

Commodities generally: No similar provision.

7. Use of misleading art.

Food: A food is misbranded "if its labeling is false in any particular" (§ 616.250(1)). "Labeling" means all labels and other written, printed, or graphic matters upon an article or any of its containers or wrappers, or accompanying such article (§ 616.205(7)).

Commodities generally: No similar provision.

8. Misrepresenting package contents on label.

Food: Food in package form must bear a statement of the quality of the contents in terms of weight, measure, or numerical count.

Reasonable variations shall be permitted for unavoidable leakage, shrinkage or evaporation which may normally occur in good distribution practices. Exemptions as to small packages shall be established (§ 616.250(5)).

Commodities generally: A commodity in package form must bear a statement of the net quantity of the contents in terms of weight, measure, or numerical count.

Reasonable variation or tolerance shall be permitted (§ 618.160).

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology, such as "jumbo," etc.

Food: No specific provision. However:

If the Department deems it necessary in the interest of consumers, the department may prescribe by regulation the term or terms which must be used in making the statement of quantity as to any food (§ 616.250(5) (D)).

This may or may not be applicable here.

Commodities generally: No provision.

PENNSYLVANIA

Statutes Annotated (Purdons).

Regulations under food law and under weights and measures not available for examination.

The misbranding provisions of the food law are similar to the Federal act of 1906.

1. Obscure net weight designation.

Food: There is no requirement in the food law for net weight marking of packages. There is a provision in the weight and measures law applicable to commodities generally. The food law directs that—

All required labeling shall be on the main label of each package, and in type of not less than eight-point, brevier caps, in size—unless the size of the package will not permit the use of eight-point cap type in which case the size of type may be reduced proportionately, * * * and in such position and terms as may be plainly seen and read by the purchaser (Title 31, § 4).

Commodities generally:

No person shall distribute or sell * * * any commodity in package form, unless the net quantity of the contents shall be plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count (title 76, § 247).

In addition to the provisions concerning the marking of the net quantity in terms of weight, measure, or numerical count, all retail packages of meat and meat products and poultry and poultry products when sold at retail, except eggs, shall be plainly marked with the price per pound and the selling price (ibid.).

2. Oversized packages.

No provision.

3. Multiple package sizes.

No provision. Standard packages have been provided for flour, meal, grits, and oleomargarine.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

No provision.

7. Use of misleading art.

Food:

A food is misbranded if the package containing it, or its label shall bear any statement, design, or device, regarding the substances or ingredients contained therein, which statement, design or device shall be false or misleading in any particular (title 31, § 4).

Commodities generally: No provision.

8. Misrepresenting package contents on label.

Food: No provision.

Commodities generally: Net quantity of content must be marked on outside of package in terms of weight, measure or numerical count.

Reasonable variations shall be permitted; and tolerances may be established by regulations of the department. Before any tolerances are granted, producers and manufacturers of commodities must make written application for a tolerance to the department, and must furnish proof that the use value of the commodity will not be affected by the granting of the tolerance. Small packages are exempt from marking as to net weight.

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology such as "jumbo," etc.

No provision.

RHODE ISLAND

General Laws [1956].

Regulations under the food laws and weights and measures not available for examination.

The food law, in its pertinent provisions, is similar to the existing Federal act.

No provision found for the packaging of commodities generally.

Standard packages are provided for bread, milk, and cream.

SOUTH CAROLINA

Code (1952).

Regulations under food law and weights and measures examined.

The misbranding provisions of the food law are similar to the Federal act of 1906.

1. Obscure net weight designation.

Food: A food is misbranded—

if in package form and the contents are stated in terms of weight or measure and are not plainly and correctly stated on the outside of the package (§ 32-1516).

Commodities generally:

Whenever any of the commodities mentioned in section 66-157 (products of the farm, orchard, and garden and certain articles of merchandise) or any article of merchandise of any kind whatsoever, not specified in this article (art. 1, ch. 5, Containers and Grades—General Provisions) is sold or exposed for sale in packages or containers of any kind the net quantity of the contents of the package or container shall be plainly marked, branded or otherwise indicated on the outside or top thereof or on a label or tag attached thereto (§ 66-302).

2. Oversized packages.

No provision.

3. Multiple package sizes.

No provision. Standard packages have been provided for flour, meal, hominy, grits, and commercial feed.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

Food: No provision.

Commodities generally :

No containers, boxes, or baskets wherein food products or other commodities are packed shall have a false bottom or be so constructed as to facilitate the perpetration or deception of fraud (§ 66-306).

7. Use of misleading art on package.

Food: A food is misbranded—

if the package containing it, or its label, shall bear any statement, design or device regarding the ingredients or the substances contained therein which is false or misleading in any particular (§ 32-1516).

Commodities generally: No provision.

8. Misrepresenting package contents on label.

Food: A food is misbranded—

if in package form and the contents are stated in terms of weight or measure and they are not plainly and correctly stated on the outside of the package (§ 32-1516).

Commodities generally: Commodities in package form must bear a statement of net contents in terms of weight, measure, or numerical count (§§ 66-302, 66-303).

It shall not be held to be a violation of the provisions of this article when a commodity in a container is sold or offered or exposed for sale and there is a discrepancy between the actual quantity of the commodity in such container and the net quantity of the contents thereof indicated on the container as prescribed in § 66-302 if the seller purchased such commodity in such container in good faith, relying upon such indication of the net contents thereof and sold such commodity in such container without altering the contents thereof or the indication of the contents thereof * * * (§ 66-305).

Small packages are exempt (§ 66-310). Also exempt is the—

sale of any container of an ornamental or symbolic character with which a quantity of some commodity is sold merely incidental (§ 66-310).

Regulation promulgated under section 66-163, Code of Laws of South Carolina, 1952:

The declaration of the quantity of a particular commodity shall be expressed in such terms of weight, measure, or count, or a combination of count and weight, measure, or size, as have been firmly established in general consumer usage and trade custom and as give accurate information as to the quantity of the commodity. But if there exists no firmly established general consumer usage and trade custom with respect to the terms used in expressing such declaration of quantity, the declaration shall be in terms of liquid measure if the commodity is liquid, or in terms of weight if the commodity is solid, semi-solid, viscous, or a mixture of solid and liquid: *Provided*, That, if the commodity is packaged in an aerosol container, the declaration shall be in terms of weight (including the propellant): *And provided further*, That, if the commodity is a textile material, the declaration shall be in terms of linear measure unless the material is one in which there exists a firmly established general consumer usage and trade custom to declare the quantity in terms of weight, in which case the declaration may be in terms of weight.

9. Misuse of "cents off" promotions.

Food: No provision.

Commodities generally:

Whenever any commodity or service is sold, or is offered, exposed or advertised for sale by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser (regulations).

10. Misleading quantity terminology, such as "jumbo," etc.

Regulation promulgated under section 66-163, Code of Laws of South Carolina, 1952:

In no case shall a declaration of quantity be qualified by the addition of words "when packed," "approximately," 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.

SOUTH DAKOTA

Code (1939).

Regulations under food law examined. No law concerning packages generally found.

The misbranding provisions of the food law are similar to the Federal act of 1906. Statements below relate to food.

1. Obscure net weight designation.

A food is misbranded—

if in package form and the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count * * * (§ 22.0403).

Except as otherwise provided by this regulation, a package of food shall be plainly and conspicuously marked with the quantity of the contents in terms of weight, measure, or numerical count on the outside of the container or the covering of the package usually delivered to the consumer.

* * * * *

The statement of the quantity of the contents shall be plain and conspicuous, shall not be a part of or obscured by any legend or design, and shall be so placed and in such characters as to be readily seen and clearly legible when the size of the package and the circumstances under which it is ordinarily examined by purchasers or consumers are taken into consideration (regulation No. 20).

2. Oversized packages.

No provision.

3. Multiple package sizes.

No provision. Standard packages have been provided for berries, small fruits, milk, cream, flour, meal, and bread.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

No provision.

7. Use of misleading art on package.

A food in package form is misbranded—

if the package containing it, or its label, shall bear any statement, design, or device regarding the ingredients or the substance contained therein, which statement, design, or device shall be false or misleading in any particular * * * (§ 22.0403(4)).

8. Misrepresenting package contents on label.

Food in package form must bear a statement of the quantity of the contents in terms of weight, measure, or numerical count (§ 22.0403(3)).

Certain tolerances and variations from the quantity of the contents marked on the package shall be allowed: (1) Discrepancies due exclusively to errors in weighing, measuring, or counting which occur in packing conducted in compliance with good commercial practice. (2) Discrepancies due exclusively to difference in the capacity of bottles

and similar containers, resulting solely from unavoidable difficulties in manufacturing such bottles or containers so as to be of uniform capacity. (3) Discrepancies in weight or measure due exclusively to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of the package to evaporation or to the absorption of water. Discrepancies under classes (1) and (2) above shall be as often above as below the marked quantity. The reasonableness of discrepancies under (3) above will be determined on the facts in each case. Small packages are exempt (regulation No. 20).

9. Misuse of "cents off" promotions.

No provision

10. Misleading quantity terminology, such as "jumbo," etc.

No provision.

TENNESSEE

Regulation under food law not available for examination. Regulations under weights and measures examined.

The food law, in its pertinent provisions, is similar to the existing Federal act. Statements below relate to commodities generally (Weights and Measures Acts, Laws 1961, ch. 42, House Bill No. 73, approved Feb. 9, 1961).

1. Obscure net weight designation.

Any commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declaration of the net quantity of the contents in terms of weight, measure, or count (§ 22).

All information required to appear on a package 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. Such information shall appear on each part or panel of the package that is likely to be displayed when the package is exposed or offered for sale, or sold, under customary marketing conditions. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility (Regulation No. 1, par. 6).

2. Oversized packages.

The Commissioner of Agriculture may prescribe regulations for reasonable standards of fill for any commodity in package form (§ 6). The contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question (§ 24). And no commodity in package form shall be in a container so filled as to mislead the purchaser as to the quantity of the contents (§ 24).

3. Multiple package sizes. No provision.

Standard packages have been provided for ice milk, butter, oleo-margarine, and margarine, fluid dairy products, flours, meals, grits, berries, small fruits, and commercial feeding stuffs.

4. Packaging to price.

* * * any commodity in package form, the package being one of a lot containing random weights, measures or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure or count (§ 24).

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package (§ 24).

7. Use of misleading art on package.

No provision.

8. Misrepresenting package contents on label.

A commodity in package form shall bear a statement of the net quantity of the contents in terms of weight, measure, or count. The Commissioner may by regulation, establish (a) reasonable variations to be allowed, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale to the consumer intact and customarily not sold as individual units or weighed or measured at time of sale to the consumer (§ 22).

Variations from the declared net weight, measure, or count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages that occur in good packaging practice, but such variations shall not be permitted to such extent that the average of the quantities in the packages of a particular commodity comprising either a shipment or other delivery of the 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. (Reg. No. 1 (8) (a)).

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 (regulation No. 1 (8) (c)). The magnitude of variations shall in the case of any shipment, delivery, or lot, be determined by the facts in the individual case (regulation No. 1 (8) (d)).

9. Misuse of "cents off" promotions.

Whenever any commodity or service is sold by weight, measure, or count, the price shall not be misrepresented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser (§ 26). (Also see No. 4.)

10. Misleading quantity terminology, such as "jumbo," etc.

In no case shall a declaration of quantity be qualified by the addition of the words "when packed" 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 (regulation No. 1 (3) (i)).

TEXAS

Regulations have not been promulgated under the Texas Food, Drug, and Cosmetic Act which was adopted in 1961. Regulations under the weights and measures law not available.

The food law follows the existing Federal act. References below are to commodities generally as set forth in the Penal Code.

1. Obscure net weight designation.

It shall be unlawful to keep for the purpose of sale * * * any commodity in package form unless (a) the net quantity of contents, in terms of weight, measure, or numerical count * * * shall be plainly and conspicuously marked on the outside of the package (art. 1037).

2. Oversized packages.

It shall be unlawful to sell any commodity in package form if its container is so made, formed, or filled, or if it is so wrapped, as to mislead the purchaser as to the quantity of the contents; or if the contents of its container fall below the standard of fill prescribed by regulations promulgated as provided in this Section. For the effectuation of the purposes of this Section the Commissioner is hereby authorized to promulgate regulations fixing and establishing for any commodity in package form a standard of fill of container, which in his best judgment is reasonable with respect to the physical characteristics of the commodity, the size, shape, and physical characteristics of the container, prevailing methods of handling and transportation of packages, and generally accepted good commercial practice in filling methods (art. 1037).

3. Multiple package sizes.

No provision. Standard packages have been provided for bread flours, meals, milk, cream, and commercial fertilizer

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

It is unlawful to expose for sale any commodity in package form if its container is so made, formed, or filled, or if it is so wrapped, as to mislead the purchaser as to the quantity of the contents (art. 1037).

7. Use of misleading art on package.

No provision.

8. Misrepresenting package contents on label.

A commodity in package form must bear a statement of the net quantity of contents, in terms of weight, measure, or numerical count. Reasonable variations shall be permitted, and exemptions as to small packages made by regulations of the Commissioner.

There shall be no violation of this act for any discrepancy between actual weight or volume at the time of sale to the consumer and the weight marked on the container or between the fill of container and the capacity of the container if such discrepancy is due to unavoidable leakage, shrinkage, evaporation, waste, or to causes beyond the control of the seller acting in good faith (art. 1037).

9. Misuse of "cents off" promotions.

It shall be unlawful for any person to misrepresent the price of a commodity, thing, or service sold or offered or exposed for sale, or to represent the price or the quantity of any commodity, thing, or service sold or offered or exposed for sale in any manner calculated or tending to mislead or deceive an actual or prospective customer (art. 1037).

10. Misleading quantity terminology such as "jumbo," etc.

No provision.

UTAH

Code Annotated.

Regulations under food law not available for examination. Those under weights and measures examined.

The food law (§§ 4-26-1 et seq) in its pertinent provisions is similar to the existing Federal act.

Section 4-1-21 of the Code confers certain powers on the State Board of Agriculture among which are to perscribe regulations for the prevention of false weights and measures, such regulations to conform as nearly as practicable to similar Federal laws.

Statements below relate to commodities generally.

1. Obscure net weight designation.

Any commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declaration of the net quantity of the contents in terms of weight, measure or count (regulations, par. 1).

Whenever any commodity in package form is offered for sale the quantity of the contents of the package shall be plainly and conspicuously marked or otherwise indicated on the side or top thereof, or on a label or tag attached thereto, and shall not be a part of, or obscured by, any legend or design and shall be so placed and in such characters as to be readily seen and clearly legible when the size of the package and the circumstances under which it is ordinarily examined by purchaser or consumer are taken into consideration (regulations, par. 2).

2. Oversize packages.

No provision.

3. Multiple package sizes.

No provision. Standard packages have been provided for butter, oleomargarine, wheat, flour, cornmeal, hominy, grits, berries, small fruits, and intoxicating liquors.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

No provision.

7. Use of misleading art.

No provision.

8. Misrepresenting package contents on label.

A commodity in package form shall bear a statement of the net quantity of the contents in terms of weight, measure, or count. Tolerances and variations shall be allowed: (a) Discrepancies due exclusively to errors in weighing, measuring, or counting which occur in packaging conducted in compliance with good commercial practice. (b) Discrepancies due exclusively to differ in the capacity of bottles and similar containers resulting solely from unavoidable difficulties in manufacturing such bottles or containers so as to be of uniform capacity. (c) Discrepancies in weight or measure due exclusively to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of the packages to evaporation or to the absorption of water. Discrepancies under (a) and (b) above shall be as often above as below the marked quantity. The reasonableness of discrepancies under (c) above will be determined on the facts of each case (regulations, par. 14).

9. Misuse of "cents off" promotions.

No provision.

10. Misleading quantity terminology such as "jumbo," etc.

In connection with the declaration of weight—

neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure or count (for example: "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package, shall be used, unless otherwise specified under the law and regulations based thereon (Regulations, par. 1).

VERMONT

Statutes Annotated.

No regulations have been promulgated under the food law. No provision found relating to the packaging of commodities generally. Weights and measures law also examined.

The food law, in its pertinent provisions, is similar to the existing Federal act. The law is applicable to hazardous substances in addition to food, drugs, and cosmetics. Standard packages have been provided for oleomargarine.

VIRGINIA

Code (1950).

No regulations have been adopted under section 3-316 which pertain to misbranded foods. Regulations under weights and measures examined.

The food law, in its pertinent provisions, is similar to the existing Federal act. Statements below pertain to weights and measures.

1. Obscure net weight designation.

It shall be unlawful to keep for the purpose of sale, etc., any commodity in package form unless the net quantity of the contents be plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count * * * (§ 59-103).

Section 6 of regulation 1 adopted by the State Board of Agriculture reads as follows:

"**PROMINENCE AND PLACEMENT.**—All information required to appear on a package 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. *Such information shall appear on the principal display panel of the package.* Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility."

2. Oversized packages.

§ 3-708.28. Misleading containers prohibited; contents of container not to fall below standard.—No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled, as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the Board. (1962, c. 298.)

3. Multiple package sizes.

No provision. Standard packages have been provided for flour, meal, milk, cream, berries, small fruits, and alcoholic beverages.

4. Packaging to price.

§ 3-708.27. Certain packages to show price per single unit of weight, etc.—In addition to the declarations required by § 3-708.26 of this chapter, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count. (1962, c. 298.)

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

No provision.

7. Use of misleading art on packages.

No provision.

8. Misrepresenting package contents on label.

Net quantity of contents must be marked on outside of package in terms of weight measure or numerical count. Reasonable variations or tolerances shall be permitted and exemptions as to small packages established by regulations made by the Commissioner (§ 59-103).

Regulation WM-2—Fixing A Tolerance for Packaged Commodities:

The following tolerances are hereby established and shall apply to those packaged products which in the course of normal marketing procedure customarily lose or take on moisture.

1. Actual moisture content of the product at the time of packing shall not exceed (a) the moisture content legally fixed as a maximum, or (b) in cases where no legal maximum is fixed, the moisture content generally recognized in the industry as a proper maximum.

2. When packages are check-weighed or check-measured at the location where packaged, actual weight or measure shall in no case be less than the declared weight or measure; that is, no tolerance in deficiency shall be allowed. Packages may contain reasonable amounts in excess of declared amounts designed to compensate for anticipated loss of moisture prior to ultimate sale.

3. When packages are check-weighed or check-measured elsewhere than at the location where packaged, at least a representative sample of the packages available shall be checked, and average actual weight or measure may be less than the declared weight or measure by not more than 1% of the declared amount; that is, a tolerance of 1% in deficiency shall be allowed; provided, however, that if for any particular lot of packages, this tolerance is exceeded, and if it can be established that for the commodity in question shortages in excess of the prescribed tolerance may unavoidably result from normal handling and storage carried out in accordance with good commercial practice, the amount of the tolerance to be allowed shall be determined by the facts in the particular case.

Any packaged commodity which fails to comply with the above, must be reconditioned and properly marked, or reweighed and plainly and conspicuously marked with the net weight at the time they are sold to the customer.

9. Misuse of "cents off" promotions.

(See No. 4.)

10. Misleading quantity terminology such as "jumbo," etc.

* * * neither the qualifying term "when packed" or words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package shall be used (§ 3-708.26)

WASHINGTON

Laws 1959, chapter 291.

Regulations under food law not available for examination. Those under weights and measures examined.

The food law (ch. 69.04) in its pertinent provisions is similar to the existing Federal act. Statements below relate to weights and measures.

1. Obscure net weight designation.

A commodity in package form—

shall bear on the outside of the package a definite, plain and conspicuous declaration of the net quantity of the contents in terms of weight, measure or count (§ 22).

Section 13 of the regulations promulgated under chapter 291 of 1959 Laws states—

Information required to appear on the label of a package may be considered to lack the requisite definiteness, plainness, and conspicuousness by reason, among other reasons, of—

1. The failure of such information to appear on the part or panel of the label that is presented or displayed under customary conditions of purchase;

2. The failure of the label to extend over the area of the container or package available for such extension, so as to provide sufficient label space for the prominent placing of such information;

3. Smallness or style of type in which such information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter.

2. Oversized packages.

No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standards of fill as may have been prescribed for the commodity in question by the director (§ 24).

3. Multiple package sizes.

No provision. Standard packages have been provided for butter, oleomargarine, margarine, fluid dairy products, flour, meal, grits, berries, small fruits, bread, commercial feeding stuff, and intoxicating liquors.

4. Packaging to price.

No provision.

5. Odd-size packaging.

No provision.

6. Packaging in misleading sizes and shapes.

A commodity in package form shall not be so made, formed or filled as to mislead the purchaser as to the quantity of the contents of the package (§ 24).

7. Use of misleading art.

No provision.

8. Misrepresenting package contents on label.

A commodity in package form shall bear a declaration of net quantity of contents.

The director shall by regulation establish (a) reasonable variations to be allowed, (b) exemptions as to small packages and (c) exemptions as to commodities put up in variable weights or sizes for sale to the consumer intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer (§ 22).

9. Misuse of "cents off" promotions.

Whenever any commodity or service is sold, offered, exposed, or advertised for sale, by weight, measure or count, the price shall not be misrepresented nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser (§ 27).

10. Misleading quantity terminology such as "jumbo", etc.

The statement of the quantity of the contents shall declare to quantity of commodity in the package, * * * and neither the qualifying term "when packed" nor words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant," "full", and the like) that tends to exaggerate the amount of commodity in a package, shall be used in connection with such statement of quantity (regulation 1).

Regulation 6 deals with certain paper goods. Since there was testimony before the committee on this subject the regulation is set forth below:

Regulation 6. Absorbent Tissues

Section 1. Box Facial Tissues.

1. The declaration of content shall include a statement of the single sheet count and of the "tissue" count expressed in terms of the number of "plys" or single sheets comprising a tissue, and the sheet size shall be specified. Statements of sheet count and tissue count shall be equally prominent and of the same size lettering, and all three statements shall be in immediate juxtaposition, thus comprising a complete declaration. Wherever, on a carton or label, a statement of sheet count is made, this shall be accompanied by the corresponding "tissue" count and the sheet size.

2. The term "sheet," and the term "tissue," as used above, mean respectively, the separate individual sheet of tissue, and whatever combination of individual sheets may comprise a "pull out," "usable unit," or combination dispensed from a container or removable from a roll or package in a single operation.

3. An example of declaration conforming to this regulation as set forth above is as follows:

500 single sheets
250 two-ply tissues
Size: 9" x 10"

4. Standards of Fill.

(a) The inner size of cartons shall not exceed by more than $\frac{3}{8}$ inch in either length or width, the length or width respectively of the sheets as folded for packaging.

(b) The inner height of boxes or cartons shall not exceed the height of the contents by more than 0.5 inch at 70° to 75° Fahrenheit temperature and 50% humidity up to and including 200 count, with 0.25 inch added for each 100 additional single sheets.

5. Tolerances.

(a) Tolerance 0.25 inch in either or both dimensions or a single sheet.

(b) 3% tolerance in number of sheets but each case must average full count.

Section 2. Toilet Tissues Facial Type, 2 Ply.

1. The same Content Labeling Procedure shall apply as described in Section 1 of Regulation 6 for Box Facial Tissue.

Section 3. Toilet Tissues Single Fly Type.

1. These shall be sold by numerical count. The size and dimension of each sheet must be indicated on the wrapper and the minimum size of each sheet shall be $4\frac{1}{2}$ " x $4\frac{1}{2}$ ". Permissible tolerance shall not be in excess of 3% on numerical count. Each shipping case shall average full count.

Section 4. Roll Paper Towels—Household Type.

1. Resale packages must be clearly and conspicuously marked with numerical count and sheet size, EXCEPT continuous roll type not perforated into sheets shall be marked with the width and length of the roll. There shall be 3% tolerance on sheet count. Each shipping case shall average full count. There shall be no tolerance on sheet size.

WEST VIRGINIA

Code [1961].

Regulations under food law not available. Regulations under weights and measures examined.

Statutory provisions relating to pure foods do not touch on the subject of misbranding. There are no provisions under the food law dealing with packaged food. Statements below relate to commodities generally as treated under weights and measures provisions.

1. Obscure net weight designation.

It shall be unlawful to keep for the purpose of sale * * * any commodity in package form unless the net quantity of the contents be plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count * * * (§ 4529).

§ 3-708.28. *Misleading containers prohibited; contents of container not to fall below standard.*—No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled, as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the Board (1962, c. 298).

2. Oversized packages.

No provision. Standard packages have been provided for flours, meals, hominy grits, milk, and cream.

3. Multiple package sizes.

No provision.

4. Packaging to price.

§ 3-708.27. *Certain packages to show price per single unit of weight, etc.*—In addition to the declarations required by § 3-708.26 of this chapter, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count (1962, c. 298).

5. Odd-size packaging, particularly the use of fractions.

No provision.

6. Packaging in misleading sizes and shapes.

No provision.

7. Use of misleading art on packages.

No provision.

8. Misrepresenting package contents on label.

Net contents must be marked on outside of package in terms of weight, measure, or numerical count. Reasonable variations or tolerances and also exemptions as to small packages shall be established by rules and regulations made by the commissioner of weights and measures (§ 4529).

9. Misuse of "cents off" promotions.

(See Number 4.)

10. Misleading quantity terminology such as "jumbo," etc.

§ 3-708.26. *Information to be shown on packages.*—* * * neither the qualifying term "when packed" or words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package shall be used."

WISCONSIN

Statutes.

Regulations under food law examined. Those under weights and measures not available for examination.

The food law (ch. 97), in its pertinent provisions, is similar to the existing Federal act. No provision found under weights and measures dealing with the packaging of commodities generally.

Standard packages have been provided for fluid dairy products, flour, meal, hominy grits, berries, and bread.

WYOMING

(Statutes [1957]).

Regulations under food law examined. There are no statutory provisions for the packaging of commodities generally.

The food law, in its pertinent provisions, is similar to the existing Federal act with one exception. No authority is conferred to prescribe regulations for standards of fill.

Standard packages have been provided for oleomargarine.

III

WARTIME REGULATION OF CONTAINERS

During World War II there was, of course, an imperative need to conserve raw materials in aid of the successful prosecution of the war. To effectuate conservation and related objectives the War Production Board was established within the Office for Emergency Management by Executive Order 9024 of January 16, 1942 (and amplified by subsequent Executive Orders 904 of January 24, 1942, and 9125 of April 7, 1942). One of the duties of the Board was to "exercise general direction over the war procurement and production program." The Office of Production Management which had been established earlier to formulate and execute measures to increase and regulate production of defense materials was abolished by Executive Order 9040 of January 24, 1942, and its records, property, etc., transferred to the War Production Board.

Various conservation and limitation orders of the War Production Board dealt with different types of materials entering into the construction of containers. Types of containers affected were tinplate or terneplate cans (7 F.R. 497), collapsible tin, tin-coated and alloy tubes (7 F.R. 2537), glass containers (7 F.R. 3514), cans made of black plate (7 F.R. 5642), steel drums (7 F.R. 7236), fluid milk shipping containers (7 F.R. 7808), textile shipping bags (7 F.R. 8871), grocers and variety bags (8 F.R. 2576), folding and setup boxes (8 F.R. 358), wooden shipping containers (8 F.R. 2591), paper shipping sacks (8 F.R. 7898), specialty bags (paper) [8 F.R. 8598], fiber shipping containers (8 F.R. 13901), paper cups and paper food containers (9 F.R. 5978). A brief summary of pertinent orders of the War Production Board are set forth below. All orders listed probably underwent some modification during the course of the war. The basic order relating to tin cans was amended many times.

1. TINPLATE OR TERNEPLATE CANS

Conservation Order M-81, to conserve the supply and direct the distribution of tinplate and terneplate was issued February 11, 1942 (7 F.R. 947). As stated above, this order was amended numerous times during the course of the war. Examining the order as amended June 8, 1944 (9 F.R. 6342), the schedules attached thereto list the only products permitted to be packed in cans, packing quotas, sizes of cans, and the plate permitted for the manufacture of cans. Can sizes are specified for 22 items under the heading of "Fruits and Fruit Products," 26 under "Vegetables and Vegetable Products," 21 under "Fish and Shellfish," 3 under "Dairy Products," 9 under "Meat and Meat Products," and 6 under "Miscellaneous Foods." Non-food-can sizes are specified for 66 commodities. In a few instances only one can size was specified for a commodity; however, in most cases two and three sizes were specified.

2. COLLAPSIBLE TIN, TIN-COATED AND ALLOY TUBES

Conservation Order M-115 issued April 1, 1942 (7 F.R. 2537), restricted the use of tubes under the above heading to (a) medicinal and pharmaceutical ointments and other preparations extemporaneously compounded or dispensed in manufactured form by pharmacists, (b) ointments and other preparations for ophthalmic use, (c) solutions for hypodermic injections, (d) sulfonamide ointment and blood plasma, (e) diagnostic extracts, and (f) pile pipes.

3. GLASS CONTAINER AND CLOSURE SIMPLIFICATION

Limitation Order L-103 issued May 11, 1942 (7 F.R. 3514) authorized the issuance of schedules establishing simplified practices with respect to designs, weights, sizes, or types of glass containers and closures.

Schedule A thereto (7 F.R. 3514) dealt with distilled spirits. It limited containers to capacities of 1 quart, four-fifths quart, 1 pint, and one-half pint. Containers for cordials, cocktails, and specialties were limited to one-half pint.

Schedule B (7 F.R. 3515) was concerned with malt beverages. It limited containers therefor to 12 fluid ounces; 1 quart; and one-half gallon.

Schedule C (7 F.R. 7231) prescribed several different sizes of containers for preserves and jelly.

Schedule D (7 F.R. 7231) fixed the capacities of containers for the packaging of wine: 1 gallon; one-half gallon; 26 fluid ounces champagne; 13 fluid ounces champagne; 1 quart, flat bottom; four-fifths quart, push-up bottom; four-fifths quart, flat bottom; four-fifths pint, flat bottom; 1 pint, flat bottom.

Schedule E (7 F.R. 10218) prescribed standard glass containers for paints, varnishes, lacquers, shellacs, stains, linseed oil, turpentine, benzine, mineral spirits, varnish and paint removers, thinners, and driers. Such containers were to conform to certain exhibits set out in the schedule.

4. CANS MADE OF BLACK PLATE

Conservation Order M-136 issued July 22, 1942 (7 F.R. 5642), fixed the capacities of cans to be used in packaging 20 different nonfood products.

5. STEEL SHIPPING DRUMS

Limitation Order L-197 issued September 14, 1942 (7 F.R. 7238), lists 136 nonfood commodities that are not to be packaged in steel drums.

6. FLUID MILK SHIPPING CONTAINERS

Conservation Order M-200 issued October 1, 1942 (7 F.R. 7808), fixes the capacities for this type of container at 4 quarts, 8 quarts, 10 quarts, 12 quarts, 32 quarts, and 20 quarts and 40 quarts.

7. TEXTILE SHIPPING BAGS

Conservation Order M-221 issued November 2, 1942 (7 F.R. 8871), restricted the use of bags under this heading. The use of new bags was limited to packing of certain products: Barley; beans and peas; chemicals (other than fertilizer); dairy products; mohair; potatoes; rice; salt (rock), seeds, feeds, and meals for animal consumption; fruits (dried); nuts; sponges; starch; sugar (raw); wheat; wool and wool products. Certain restrictions were imposed on the use of used bags.

8. GROCERS AND VARIETY BAGS

Limitation Order L-261 issued February 27, 1943 (8 F.R. 2577), was concerned with the type, size, and paper specifications for manufacturing stock grocers and variety bags. Grocers general usage bags were of four different types: (a) Self-opening, (b) square, (c) flat, and (d) sack (satchel bottom). Several different pound sizes were permitted under each type: (a) Self-opening, one-half, 1, 2, 3, 4, 5, 6, 8, 10, 12, 14, 20, and 25 pound; (b) flat, 3, 5, 7, 10, 14, and 20 pound; and (c) square, one-half, 1, 2, 3, 4, 5, 6, 7, 10, 12, 14, 20, and 25 pound; and (d) sack, one-eighth barrel poultry, one-sixth barrel bundle, and one-fourth barrel standard.

As to variety bags the normal usage listed therefor was the packaging of candy, garments, pants, laundry, liquor bottles, notions, millinery, shopping, and extra heavy duty (sugar). There was some variation in the sizes prescribed under this heading. Sizes fixed for heavy duty were 1, 2, 3, 4, 5, 6, 8, 10, 12, 16, 20, and 25 pounds. There was, of course, less variation in variety bags for other uses.

9. FOLDING AND SETUP BOXES

Limitation Order L-239 of January 8, 1943 (8 F.R. 358), restricted the manufacture and use of boxes under this heading. Schedules 1 through 4 accompanying this order dealt with food boxes, beverage and tobacco boxes, retail boxes, boxes for paper products, and sporting goods boxes, respectively.

With respect to food boxes, the manufacture of any box for packaging butter, lard, oleomargarine, or similar products with a capacity of less than 1 pound was not permitted; the capacity of boxes for direct factory packed ice cream was fixed at 1 pint, 1 quart, 2½ gallons or larger than 2½ gallons; restrictions on packing crackers and baked goods were imposed, and the manufacture of boxes therefor could not exceed maximum specifications set forth in the order.

The manufacture of boxes for packaging alcoholic beverages was not permitted.

The manufacture of retail boxes was restricted to those set forth in schedule III of this order. Specifications as to length, width, depth, and lid depth were provided for 75 different boxes.

Restrictions on the use of boxes for paper products generally dealt with the quality of paper to be used rather than size of container.

The manufacture of boxes for packaging less than 12 golf, tennis, or baseballs was not permitted.

10. WOODEN CONTAINERS FOR FRUITS AND VEGETABLES

Limitation Order L-232 of March 1, 1943 (8 F.R. 2591), required that the manufacture of hampers, baskets, berry cups, and other wooden containers conform to the specifications there set forth. The dry capacity for hampers, baskets, and berry cups was as follows: (1) Hampers, one-half, five-eighths, and 1 bushel; (2) round stave baskets, one-half, and 1 bushel; (3) splint baskets (square braid only), 8, 12, and 16 quarts; (4) splint baskets (square-braid and slab only) 24 quarts; (5) climax baskets, 4 and 12 quarts; (6) till baskets (oblong only), 2 and 4 quarts; (7) till baskets (square only) 3 quarts; and (8) berry cups, one-half pint, 1 pint, 1 quart. In addition to the foregoing, specifications for the inside depth, width, and length of wooden containers for 64 different fruits and vegetables were set forth.

11. PAPER SHIPPING SACKS

Limitation Order L-279 issued June 11, 1943 (8 F.R. 7898), restricted the manufacture of paper shipping sacks designed for packing certain commodities. Sizes of sacks were fixed at 2, 5, 10, 25, and 100 pounds for beans, flour (milled wheat), meal, plaster (gypsum), processed feed (mixed, mill), starch, and sugar. Other sack sizes and commodities were: Cement (standard portland) 94 pounds; potatoes, 2, 5, 10, 15, 25, 50, and 100 pounds; rice, 2, 3, 5, 10, 15, 25, 50, and 100 pounds; salt, 2, 4, 10, 25, 50, and 100 pounds; seeds 2, 5, 10, 25, 50, 100 pounds and 1 and 2 bushels.

12. SPECIALTY BAGS (PAPER)

Limitation Order L-302 of June 22, 1943 (8 F.R. 8598), defines "specialty bag" and "bottle carryout bag." The manufacture of the latter type was prohibited.

13. FIBER SHIPPING CONTAINERS

Limitation Order L-317 of October 11, 1943 (8 F.R. 13901), prohibits the manufacture of certain types of containers and specifies numerous prohibited uses. The manufacture of the following types of containers from corrugated or solid fiber (0.060 or heavier) was prohibited: (a) Bottle and can carryouts, (b) counter boxes, (c) display shippers, (d) laundry boxes and laundry shells, and (e) retail gift boxes. Prohibited uses may be grouped under the headings of (1) paper products, (2) fresh vegetables, (3) building materials, (4) textiles, (5) hardware, (6) leather products, (7) glass products, (8) clothing, and (9) horticultural items.

14. PAPER CUPS AND PAPER FOOD CONTAINERS

Limitation Order L-336 of June 1, 1944 (9 F.R. 5978), prohibited the sale and commercial use of paper cups for these purposes: (1) Packages of cups for retail sales, (2) hot-drink cups for any purpose other than in-plant feeding, (3) hot-drink cups for serving cold foods or beverages, (4) paper cups to be served with individual bottled

beverages in paper or glass containers (except for in-train feeding), and (5) portion control cups for party favors, or in any other form, for sale through retail stores.

IV

SELECTED FOREIGN JURISDICTIONS

A. CANADA

Current Canadian laws regarding deceptive packaging and labeling practices are found in the consolidation of the Food and Drug Act (1953) and Food and Drug Regulations (1954). This combined document has been recently revised to include all subsequent amendments. The laws, based on those put forth earlier in the Food and Drug Act of 1938, parallel our own in large part. They set out similar broad ground rules for the manufacture and sale of foods, drugs, cosmetics, and devices.¹ They include extensive lists of particular products with standards of identity for each. They are promulgated under the authority of the National Department of Health and Welfare and are enforced by the appointed inspectors of this same organization. But they extend somewhat further in defining the realm of deceptive packaging and labeling than do our own.

FOOD AND DRUGS ACT

Interpretation

2. (a) *advertisement*—"any representation by any means whatever for the purpose of promoting directly or indirectly the sale or disposal of any food, drug, cosmetic, or device;"

(c) *cosmetic*—"any substance or mixture of substances manufactured, sold or represented for use in cleansing, improving or altering the complexion, skin, hair or teeth, and includes deodorants and perfumes;"

(d) *department*—"Department of National Health and Welfare;"

(e) *device*—"any instrument, apparatus or contrivance, including components, parts, and accessories thereof, manufactured, sold or represented for use in the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical state, or the symptoms thereof, in man or animal;"

(f) *drug*—"any substance or mixture of substances manufactured, sold or represented for use in

"(i) the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical state, or the symptoms thereof, in man or animal,

"(ii) restoring, correcting or modifying organic functions in man or animal, or

"(iii) disinfection in premises in which food is manufactured, prepared or kept, or for the control of vermin in such premises;"

(g) *food*—"any article manufactured, sold or represented for use as food or drink for man, chewing gum, and any ingredient that may be mixed with food for any purpose whatever;"

(h) *inspector*—"any person designated as a Food and Drug Inspector under subsection (2) of sec. 24;"

(i) *label*—"any legend, word or mark attached to, including in, belonging to or accompanying any food, drug, cosmetic, device, or package;"

(j) *Minister*—"Minister of National Health and Welfare;"

(k) *package*—"anything in which any food, drug, cosmetic, or device is wholly or partly contained, placed or packed;"

(m) *sell*—"sell, offer for sale, expose for sale, have in possession for sale, and distribute."

¹ The definitions of "foods," "drugs," "cosmetics," and "devices" are different from our own.

PART I

Food

"5. (1) No person shall label, package, treat, process, sell or advertise any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.

"(2) An article of food that is not labeled or packaged as required by the regulations, or is labelled or packaged contrary to the regulations, shall be deemed to be labelled or packaged contrary to subsection (1).

"6. Where a standard has been prescribed for a food, no person shall label, package, sell or advertise any article in such a manner that it is likely to be mistaken for such food, unless the article complies with the prescribed standard."

Cosmetics

16. "Where a standard has been prescribed for a cosmetic, no person shall label, package, sell or advertise any article in such a manner that it is likely to be mistaken for such cosmetic, unless the article complies with the prescribed standard."

PART II

Powers of Inspectors

21. (1) An inspector may at any reasonable time

(a) enter any place where any reasonable grounds he believes any article to which this Act or the regulations apply is manufactured, prepared, preserved, packaged or stored, examine any such article and take samples thereof, and examine anything that he reasonably believes is used or capable of being used for such manufacture, preparation, preservation, packaging or storing;

(b) open and examine any receptacle or package that on reasonable grounds he believes contains any article to which this Act or the regulations apply;

(c) examine any books, documents or other records found in any place mentioned in paragraph (a) that on reasonable grounds he believes contain any information relevant to the enforcement of this Act with respect to any article to which this Act or the regulations apply and make copies thereof or extracts therefrom; and

(d) seize and detain for such time as may be necessary any article by means of or in relation to which he reasonably believes any provision of this Act or the regulations have been violated.

(2) For the purposes of subsection (1), the expression "article to which this Act or the regulations apply" includes

(a) any food, drug, cosmetic or device,

(b) anything used for the manufacture, preparation, preservation, packaging or storing thereof, and

(c) any labelling or advertising material.

(3) An inspector shall be furnished with a prescribed certificate of designation and on entering any place pursuant to subsection (1) shall if so required produce the certificate to the person in charge thereof.

(4) The owner or person in charge of a place entered by an inspector pursuant to subsection (1) and every person found therein shall give the inspector all reasonable assistance in his power and furnish him with such information as he may reasonably require.

(5) No person shall obstruct an inspector in the carrying out of his duties under this Act or the regulations.

(6) No person shall knowingly make any false or misleading statement either verbally or in writing to any inspector engaged in carrying out his duties under this Act or the regulations.

(8) Any article seized under this Act may at the option of an inspector be kept or stored in the building or place where it was seized or may at the direction of an inspector be removed to any other proper place.

Forfeiture

22. (1) An inspector shall release any article seized by him under this Act when he is satisfied that all the provisions of this Act and the regulations with respect thereto have been complied with.

(2) Where an inspector has seized an article under this Act and the owner thereof or the person in whose possession the article was at the time of seizure consents to the destruction thereof, the article is thereupon forfeited to Her Majesty and may be destroyed or otherwise disposed of as the Minister may direct.

(3) Where a person has been convicted of a violation of this Act or the regulations, the court or judge may order that any article by means of or in relation to which the offence was committed or anything of a similar nature belonging to or in the possession of the accused or found with such article, be forfeited, and upon such order being made, such articles and things are forfeited to Her Majesty and may be disposed of as the Minister may direct.

(4) Without prejudice to the operation of subsection (3), a judge of a superior, county or district court of the province in which any article was seized under this Act may, on the application of an inspector and on such notice to such persons as the judge directs, order that the article and anything of a similar nature found therewith be forfeited to Her Majesty to be disposed of as the Minister may direct, if the judge finds, after making such inquiry as he considers necessary, that the article is one by means of or in relation to which any of the provisions of this Act or the regulations were violated.

Regulations

24. (1) The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect, and, in particular, but not so as to restrict the generality of the foregoing, may make regulations

(a) declaring that any food or drug or class of food or drugs is adulterated if any prescribed substance or class of substances is present therein or has been added thereto or extracted or omitted therefrom;

(b) respecting

(i) the labelling and packaging and the offering, exposing and advertising for sale of food, drugs, cosmetics and devices,

(ii) the size, dimensions, fill and other specifications of packages of food, drugs, cosmetics and devices,

(iii) the sale or the condition of sale of any food, drug, cosmetic or device to prevent the consumer or purchaser thereof from being deceived or misled as to its quantity, character, value, composition, merit or safety or to prevent injury to the health of the consumer or purchaser;

(i) not inconsistent with this Act, respecting the powers and duties of inspectors and analysts and the taking of samples and the seizure, detention, forfeiture and disposition of articles;

(j) exempting any food, drug, cosmetic or device from all or any of the provisions of this Act and prescribing the conditions of such exemption;

(k) prescribing forms for the purposes of this Act and the regulations;

(2) The Governor in Council may designate as an analyst or inspector any person on the staff of the department for such time as that person is employed in the department or for such time during the period of such employment as he may direct.³

Penalties

25. Every person who violates any of the provisions of this Act or the regulations is guilty of an offence and is liable

(a) on summary conviction for a first offence to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment, and for a subsequent offence to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both fine and imprisonment; and

(b) on conviction upon indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both fine and imprisonment.

26. A prosecution under paragraph (a) of section 25 may be instituted at any time within twelve months from the time the subject matter of the prosecution arose.

³ See Regulations, p. 13.

27. A prosecution for a violation of this Act or the regulations may be instituted, heard, tried or determined in the place in which the offence was committed or the subject matter of the prosecution arose or in any place in which the accused is apprehended or happens to be.

28. (1) Subject to subsection (2), in a prosecution for the sale of any article in contravention of this Act or the regulations, if the accused proves to the satisfaction of the court or judge that

(a) he purchased the article from another person in packaged form and sold it in the same package and in the same condition the article was in at the time he purchased it, and

(b) that he could not with reasonable diligence have ascertained that the sale of the article would be in contravention of this Act or the regulations, the accused shall be acquitted.

Evidence

29. (2) Proof that a package containing any article to which this Act or the regulations apply bore a name or address purporting to be the name or address of the person by whom it was manufactured or packaged is *prima facie* proof, in a prosecution for a violation of this Act or the regulations, that the article was manufactured or packaged, as the case may be, by the person whose name or address appeared on the package.

Exports

30. This Act does not apply to any packaged food, drug, cosmetic or device, not manufactured for consumption in Canada and not sold for consumption in Canada, if the package is marked in distinct overprinting with the word "Export", and a certificate that the package and its contents do not contravene any known requirement of the law of the country to which it is or is about to be consigned, has been issued in respect thereof in prescribed form and manner.

FOOD AND DRUG REGULATIONS

PART A—ADMINISTRATION

General

A.01.002. These regulations, where applicable, prescribe the standards of composition, strength, potency, purity, quality or other property of the article of food, drug, cosmetic or device to which they refer.

Interpretation

A.01.010. In these regulations

(b) "Act" means the Food and Drugs Act,

(d) "Director" means the Director of the Food and Drug Divisions of the Department,

(e) "inner label" means the label on or affixed to an immediate container of a food, drug, cosmetic, or device,

(f) "Lot number" means any combination of letters, figures, or both, by which any food or drug can be traced in manufacture and identified in distribution,

(g) "manufacturer", except in DIVISION 3 and DIVISION 4 of *part C*,⁴ means a person who under his own name, or under a trade, design or word mark, trade name or other name, word or mark controlled by him sells a food, drug, cosmetic or device, and includes a firm, partnership, or corporation,

(h) "official method" means the method of analysis or examination designated by the Director for use in the administration of the Act,

(i) "outer label" means the label on or affixed to the outside of a package of a food, drug, cosmetic or device.

A.01.012. The Director shall, upon request, indicate that a method is acceptable or otherwise upon its submission to him for a ruling.

PART B—FOODS

General

B.01.001.⁵ In this Part

(b) "common name" means, with reference to a food, the name of the food printed on boldface type in these Regulations, or if the name of the

⁴ Part C is concerned with Drugs and is hence not relevant to our discussion.

⁵ Amend. of 12-5-62.

food is not so printed, the name in English or French by which the food is generally known;

(f) "per cent" means per cent by weight, unless otherwise stated;

B.01.002. Subject to section B.01.010, no person shall sell a food that is not labelled as required by these Regulations.

*B.01.003.*⁶ Except as otherwise provided in these Regulations, the label of a package of food shall carry

- (a) on the main panel of the label
 - (i) the brand or trade name if any,
 - (ii) the common name of the food, and
 - (iii) in close proximity to the common name, a correct declaration of the net contents of the package in terms of weight, measure or number, as is the usual practice in describing such article,
- (b) grouped together on the main panel or on any panel other than the bottom of the package
 - (i) a declaration by name of Class II, Class III or Class IV preservative therein,
 - (ii) a declaration of any food colour added thereto,
 - (iii) a declaration of any artificial or imitation flavouring preparation added thereto,
 - (iv) in the case of food consisting of more than one ingredient and for which no standard is prescribed in these Regulations, a complete list of the ingredients by their common names in descending order of their proportions, unless the quantity of each ingredient is stated in terms of percentage or proportionate composition, and
 - (v) any other statement required by these Regulations to be declared, and

(c) on the main panel or on any panel other than the bottom of the package, the name and address of the manufacturer.

B.01.004. All information required by these Regulations to be carried on a label shall be

- (a) clearly and prominently displayed thereon, and
- (b) readily discernible to the purchaser or consumer under the customary conditions of purchase and use.

*B.01.005.*⁷ For the purposes of paragraph (a) of section B.01.004,

(a) a common name consisting of more than one word shall be deemed to be clearly and prominently displayed on the main panel of the label if each word (other than articles, conjunctions or prepositions) is in identical type and identically displayed; and

(b) a declaration of net contents, including each numeral in any indicated fraction, on a package of food shall be deemed to be clearly and prominently displayed thereon if it is in boldface type and not less than

(i) one-sixteenth of an inch in height on packages the main panel of the label of which has an area of twenty square inches or less;

(ii) one-eighth of an inch in height on packages the main panel of the label of which has an area of more than twenty but not more than forty square inches;

(iii) one-quarter of an inch in height on packages the main panel of the label of which has an area of more than forty but not more than one hundred square inches; and

(iv) three-eighths of an inch in height on packages the main panel of the label of which has an area of more than one hundred square inches.

B.01.006. Notwithstanding sub-paragraph (iii) of paragraph (a) of section

B.01.003., a declaration of net contents is not required on

(a) a package of food the weight of which including the package is less than two ounces, and

(b)⁸ fluid dairy products sold in glass containers of one-half pint, one pint, one quart, one-half gallon, three quarts or one gallon capacity.

*B.01.007.*⁹ Sub-paragraph (iii) of paragraph (a) of section B.01.003, and section B.01.004 do not apply to the position or size of the declaration of net contents on the label

⁶ Amend. of 17-8-60.

⁷ Amends. of 17-8-60 and 4-3-63.

⁸ Amend. of 5-5-60.

⁹ Amend. 21-12-61.

(a) of a package of food where the manner of declaration is described or prescribed by

(i) a statute of the Parliament of Canada or any Regulation made thereunder, or

(ii) a Provincial Statute or any Regulation made thereunder,

(b) of a food packed in glass containers on which the declaration of net contents appears twice on the shoulder or upper part of the container in blown block lettering with flat stippled face, in numerals not less than

(i) three-eighths of an inch in height where the containers are over ten ounces, and

(ii) one-quarter of an inch in height on containers of ten ounces or less,

(c) of alcoholic beverages or soft drinks,

(d) of margarine, shortening, lard and similar packaged food fats when packed in packages of one-quarter pound, one-half pound or one pound or multiples thereof,

(e) of eggs packed in a carton, and

(f) of food that is packed to a catch weight.

B.01.008. Where inner and outer labels are employed on a package of food, all label declarations required by these Regulations shall appear on both the inner and outer labels.

B.01.009. No reference, direct or indirect, to the Act or to these Regulations shall be made upon any label of, or in any advertisement for, a food unless such reference is a specific requirement of the Act or these Regulations.

B.01.010. Section B.01.003 does not apply to a food packaged from bulk at the place where the food is retailed unless that package bears a statement, mark or device describing the ingredients or the substances contained therein other than

(a) the name of the food, and

(b) the net contents of the package.

B.01.031. Where a statement or claim implying a special dietary use is made on the label of, or in any advertisement for a food, the label shall carry a statement of the type of diet for which that food is recommended.

B.01.032. Where a statement or claim implying a low sodium content is made on the label of, or in any advertisement for a food, the label shall carry a declaration of the sodium content in milligrams per 100 grams.

B.01.034. A food containing saccharin, cyclohexylsulphamic acid or the salts of either shall carry on the label the following statement:

"Contains (naming the synthetic sweetener) a non-nutritive artificial sweetener which should be used only by persons who must restrict their intake of ordinary sweets."

B.01.041. Where a standard for a food is provided in these regulations, only those ingredients named in the standard shall be used in the food.

B.01.051. Subject to section B.01.052, where the contents of a package of food are expressed in terms of weight, measure or number, no variation below the quantity declared on the label is permitted other than the following:

(a) a variation due exclusively to weighing, measuring or counting that occurs in the course of packaging the food, but not to the extent that the content of the package is less than the quantity declared on the label, as determined by the official method.

(b) variations due exclusively to differences in the capacity of containers resulting solely from unavoidable difficulties in manufacturing, but no greater variation is permitted because of the design of the containers than is usual in the case of containers of similar capacity that can be manufactured so as to be of approximately uniform capacity, and

(c) variations in weight or measure that unavoidably result from the ordinary and customary exposure of the package to evaporation or to the absorption of water under normal atmospheric conditions.

B.01.052. Notwithstanding section B.01.051, where the contents of a package of food are expressed in terms of minimum weight, measure, or number, the contents of the package shall not be less than the minimum expressed.

PART E

Cosmetics

E.01.001. No person shall sell a cosmetic that is not labelled as required by these regulations.

E.01.002. Except as provided in this *Part* a cosmetic shall carry

- (a) on both the inner and the outer labels
 - (i) the name, if any, of the cosmetic, and the description of the cosmetic if necessary for the identification thereof, and
 - (ii) the name and address of the manufacturer or distributor, and where a manufacturer or distributor has more than one place of business such address shall be that of his head office or principal place of business, but the address of any branch place of business may be printed on the label in type no larger than that used for printing the address of the head office or principal place of business.
- (b) on the outer label, a declaration of the net content expressed in terms of
 - (i) weight for solids,
 - (ii) fluid measure for liquids, or
 - (iii) weight for semi-solids except that fluid measure may be used if in accordance with established commercial practice and it gives accurate information in respect of the net content, combined with numerical count if the content is subdivided, and
- (c) on the inner label
 - (i) where a hazard exists adequate directions for safe use, and
 - (ii) any warning, caution or special direction required by these regulations to be placed thereon.

E.01.003. Notwithstanding *E.01.002*, a statement of the content need not appear on the outer label of

- (a) a package of perfume, toilet water or the like the net content of which does not exceed 4 fluid ounces, and
- (b) a package of solid or liquid cosmetic the net content of which does not exceed one ounce.

E.01.005. Any statement or information required by this *Part* to appear on a label shall be legibly and conspicuously displayed thereon.

E.01.006. Where a package of a cosmetic has only one label, such label shall contain all the information required by these regulations to be shown on both the inner and the outer labels.

E.01.012. No person shall sell any cosmetic which carries on the label thereof or in any advertisement therefor, any symbol or device to denote that the cosmetic has been prepared or compounded in accordance with a prescription.

E.01.015. No person shall sell a cosmetic in a collapsible tube packed in a carton if the dimensions of the carton exceed

- (a) for all tubes without chip-board protectors, and tubes of less than 1¼" diameter with chip-board protectors:
 - (i) length—over-all tube length filled and clipped plus 8/32"
 - (ii) height—diameter of tube plus 4/32", and
 - (iii) width—1.25 times tube diameter plus 4/32", and
- (b) for all tubes of 1¼" diameter and over with chip-board protectors:
 - (i) length—over-all tube length filled and clipped plus 10/32",
 - (ii) height—diameter of tube plus 4/32", and
 - (iii) width—1.25 times tube diameter plus 4/32".

E.01.016. Notwithstanding *E.01.015*, when an applicator is essential to the use of a cosmetic sold in a collapsible tube packed in a carton, and such applicator is included in the carton, the dimensions of the carton may exceed those set out in *E.01.015* provided that the main panel of the label of the carton clearly indicates that it is a combination package.

B. GREAT BRITAIN

STATUTES

I. Merchandise Marks Act, 1887, *Public General Acts*, 50 & 51, Vict., 1886-1887, c. 28, Secs. 2(1) (d) ; 2(2) ; 3(1) (2) and 5, pp. 72-74.

II. Merchandise Marks Act, 1953, *Public General Acts and Measures of 1953*, 1 & 2 Eliz. 2, ch. 48, pp. 645-648. Whole Act.

III. Sale of Food (Weights and Measures) Act, 1926, in *Public General Acts and Measures*, 1926, 16 & 17 Geo. 5, ch. 63, Secs. 1-5, 9, 10, 11, 13, pp. 529-530, 533, 534-535, 537.

IV. Food and Drugs Act, 1955, *Public General Acts* * * * of 1955, 4 Eliz. 2, ch. 16, Secs. 6-7, pp. 602-604.

V. Weights and Measures Act, 1963, chapter 31.

REGULATIONS

I. *Statutory Instruments*, 1953, Part 1, No. 536.

II. *Statutory Instruments*, 1957, Part 1, No. 1880.

Labeling and packaging in Great Britain are controlled by statute and implementing regulations.

STATUTES

I. The Merchandise Marks Act, 1887 (50 & 51 Vict. Ch. 28). Section 2(d) of this Act provides that—

Every person who [* * *] applies any false trade description¹⁰ to goods; [* * *] shall subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

The act also provides in section 2(3), that—

Every person guilty of an offence against this Act shall be liable—

(i) on conviction on indictment, to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

(ii) on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and

(iii) in any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

And provides—

(4) The court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the court think fit.

(5) If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.

(6) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited, in manner provided by the Summary Jurisdiction Acts: Provided that a person charged with an offence under this section before the court, of summary jurisdiction shall on appealing before the court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

¹⁰ " 'Trade description' means any description, statement, or other indication, direct or indirect, (a) as to number, quantity, measure, gauge, or weight of any goods, * * *"—Halsbury's *Statutes of England*. 2d edition (London, 1954), p. 916.

Section 5 of the same act, concerned with the application of marks and descriptions of goods, provides that—

A person shall be deemed to falsely apply to goods a trade mark or mark, who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the asset of the proprietor shall lie on the defendant.

II. The Merchandise Marks Act, 1953 (1 and 2 Eliz. 2, Ch. 48), section 1, amends the previous act by extending the provision regarding "false trade description" to include "misleading" trade descriptions.

1. (2) In the said section three (which also defines "false trade description" to mean a trade description which is false in a material respect as regards the goods to which it is applied, to include every alteration of a trade description making the description false in a material respect) that definition shall be amended by inserting after the word "false" in the second and third places where it occurs the words "or misleading".

(3) Without prejudice to the generality of those definitions as so amended, a trade description (to whichever of the matters mentioned in the definition of "trade description" as so amended it relates) shall be deemed for the purposes of the said Act to be a false trade description if it is calculated to be misunderstood as, or mistaken for, an indication as to the same or some other such matter which would be false or misleading in a material respect as regards the goods to which the description is applied, and anything calculated to be misunderstood as, or mistaken for, an indication of any of those matters shall be deemed for those purposes to be a trade description.

4. Section two of the Merchandise Marks Act, 1887, shall be amended by the deletion of subsection (2) thereof and the insertion of the following subsection:

"(2) Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves either—

"(2) that, having taken all reasonable precautions against committing an offence against this Act, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description, and that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

"(b) that otherwise he had acted innocently;
be guilty of an offence against this Act."

III. The Sale of Food (Weights and Measures) Act, 1926 (16 & 17 Geo. V. Ch. 63), specifies that—

1. A person shall not, in selling any article of food by weight, measure or number, deliver or cause to be delivered to the purchaser a less weight, measure or number, as the case may be, than is purported to be sold.

2. A statement as to weight or measure of a pre-packed¹¹ article of food shall be deemed to be a statement as to the weight or measure thereof unless otherwise specified.

3. A person shall not, on or in connection with the sale of any article of food, or in exposing or offering any article of food for sale, make any misrepresentation either by word of mouth or otherwise, or commit any other act calculated to mislead the purchaser or prospective purchaser, as to the weight or measure of the article * * *

¹¹ "Pre-packed" article is interpreted as any article which is packed or made up in advance ready for retail sale in a wrapper or container, and where any article packed or made up in a wrapper or container is found on any premises where such articles are packed, kept or stored for sale, the article shall be deemed to be packed or made up in advance ready for retail sale unless the contrary is proved.

The act also contains provisions with respect to prepacked articles of food (tea, coffee, beans, ground coffee, cocoa, cocoa powder, chocolate powder, and potatoes).

Section 4(2) of the act states that—

A person shall not sell or have in his possession for sale any pre-packed article of food of any kind of the kinds set forth in the First Schedule to this Act, unless—

(a) the article is made up for sale in quantities of two ounces, or in multiples of two ounces up to a limit of eight ounces, in multiples of a quarter of a pound up to a limit of two pounds, in multiples of half a pound up to a limit of four pounds, or in multiples of one pound; and

(b) the wrapper or container bears thereon, or on a label securely attached thereto, a true statement in plain characters of the minimum net weight of the article contained therein, or, in any case where the weight of the wrapper or container is permitted by the preceding subsection to be included in the weight purported to be sold, of the minimum weight of the article with its wrapper or container;

The Board of Trade is authorized by section 9 of the same act to make regulations for the purpose—

(a) of making additions to or removals from or otherwise varying the list of articles set forth in the First Schedule to this Act;

(b) of requiring any articles of food other than those required by this Act to be sold by weight or by measure to be sold only by weight or by measure, and of applying to any such articles any of the provisions of this Act, either without modification or subject to such modifications as may be specified in the regulations;

(c) of requiring any pre-packed articles of food other than those mentioned in the First Schedule to this Act to be labeled with an indication of their weight or measure;

(d) of prescribing the manner in which indications of weight or measure are to be marked on pre-packed articles required by or under this Act to be marked with such indications, and the manner of re-sealing wrappers and containers broken open under this Act;

Penalties of fines not exceeding 5 pounds or, upon a second or subsequent conviction of such an offense, to a fine not exceeding 20 pounds can be levied.

(2) Before any regulations other than regulations under paragraph (d) of subsection (1) of this section are made, the draft of the proposed regulations shall be laid before both Houses of Parliament, and the regulations shall not be made unless both Houses by resolution approve the draft either without modification or addition or with modifications or additions to which both Houses agree, but upon such approval being given the regulations may be made in the form in which they have been so approved.

Regulations made under paragraph (d) of subsection (1) of this section shall be laid before both Houses of Parliament as soon as may be after they are made.

10. (1) The power of inspection and of entry conferred upon inspectors of weights and measures by section forty-eight of the Weights and Measures Act, 1873, for the purposes therein specified shall extend to the inspection and weighing or measuring by any such inspector of any pre-packed articles of food for the purpose of ascertaining whether they comply with the requirements of this Act, and to the entry into any place in which the inspector has reasonable cause to believe that any such pre-packed articles intended for sale are situated.

(2) Where any person has in his possession for sale or delivery on sale any pre-packed article of food of any kind which is required by or under this Act to be sold by weight or measure, or any article of food in respect of which any representation of weights and measure is made, he shall, if so requested by an inspector of weights and measures weigh or measure such article in the inspector's presence or permit the inspector to weigh or measure it, and, if necessary for this purpose, shall break open, or allow the inspector to break open, any wrapper or container in which such article is packed, and shall also if so requested by the inspector sell the article to him.

11. (1) Any person who refuses to comply with a request made by an inspector of weights and measures under this Act, or in any other manner obstructs or hinders an inspector in the exercise of his duties under this Act, shall be liable on summary conviction to a fine not exceeding in the case of a first offence five pounds, and in the case of a second or subsequent offence ten pounds.

(3) Any person who acts in contravention of any other provision of this Act for which no special penalty is provided shall be liable on summary conviction to a fine not exceeding in the case of a first offence five pounds, in the case of a second offence twenty pounds, and in the case of a third or subsequent offence fifty pounds.

IV. The Food and Drugs Act, 1955 (4 & 5 Eliz. 2, Ch. 16), contains, in *Section 6*, provisions prohibiting the use of labels on food or drugs that falsely describe any food or drug, or are calculated to mislead to the nature, substance, or quality of the article.

Section 7 authorizes the Minister of Agriculture, Fisheries and Food to make regulations for imposing requirements as to labeling, marking, or advertising of food and descriptions which may be applied to food.

Supervision with respect to labeling as to weight, measure, and number of food is under the control of the Board of Trade.

6. (1) A person who gives with any food or drug sold by him, or displays with any food or drug exposed by him for sale, a label, whether attached to or printed on the wrapper or container or not, which—

(a) falsely describes the food or drug, or

(b) is calculated to mislead as to its nature, substance or quality, shall be guilty of an offence, unless he proves that he did not know, and could not with reasonable diligence have ascertained, that the label was of such a character as aforesaid.

7. (1) Without prejudice to the provisions of the last foregoing section, but subject to the next following subsection, the Ministers may make regulations for imposing requirements as to, and otherwise regulating, the labeling, marking or advertising of food intended for sale for human consumption, and the descriptions which may be applied to such food.

(2) In relation to the labeling and marking of food with respect to weight, measure and number, the last foregoing subsection shall apply with the substitution for the reference to the Ministers of a reference to the Board of Trade.

(3) Regulations made under this section may make provision for any purpose authorized by paragraph (c) of subsection (1) of section four of this Act in the case of regulations under that section.

(4) Regulations made under this section may apply to cream, and to any food containing milk; but except as aforesaid such regulations shall not apply to milk.

REGULATIONS

Under the authority of the statutes referred to above, regulations have been invoked for carrying out the purposes and objectives of the legislation.

Specific regulations regarding labeling are set up by—

I. The Labeling of Food Order, 1953, in *Statutory Instruments* 1953, Part 1, No. 536, pages 666-67.

Labeling of pre-packed food for sale by retail

3. No person shall sell by retail or display for sale by retail any pre-packed food, unless there appears on a label marked on or securely attached to the wrapper or container a true statement as to the matters hereinafter mentioned in this Part of this Order.

4. (1) The said statement shall be clearly legible and shall appear conspicuously and in a prominent position on the label, and if the food is pre-packed in more than one wrapper or container, the label shall be marked on or attached to the innermost wrapper or container and, if it is not clearly legible through

the outermost wrapper or container, a label bearing a like statement shall be marked on or securely attached to, or be clearly legible through, the outermost wrapper or container. For the purposes of this provision, a "liner" (that is to say, a plain immediate wrapping which under ordinary conditions of use would not be removed from the next outer wrapper or container) shall not be counted as a wrapper or container.

(2) The said statement shall specify the name of either the packer or the labeler of the food and an address at which such person carries on business:

Provided that—

(a) Where the food is packed or labeled on behalf of or on the instructions of another person and such other person carries on business at an address in the United Kingdom, the statement may specify the name and the said address of that other person instead of the name and address of the packer or labeler, as the may be;

(b) it shall be sufficient if instead of the particulars specified in this paragraph there appears prominently on the label a trademark (other than a certification trademark) of which there is in the Trade Marks Register kept under the authority of the Trade Marks Act, 1938 (a), a subsisting entry in respect of such food, and if there is associated therewith on the label the words "Registered Trade Mark".

(3) Except as respects intoxicating liquor pre-packed for sale as such, the said statement shall also specify—

(a) in the case of a food consisting of one ingredient the appropriate designation of the ingredient;

(b) in the case of a food made of two or more ingredients the common or usual name (if any) of the food and the appropriate designation of each ingredient, and, unless the quantity or proportion of each ingredient is specified the ingredients shall be specified in the order of the proportion in which they were used, the ingredient used in the greatest proportion (by weight) being specified first:

II. The Pre-packed Food (Weight and Measures: Marketing) Regulations, 1957, in *Statutory Instruments*, 1957, Part 1, No. 1880 pages 1010–15 *passim*.

Sale of Pre-Packed Food by Retail. Marking of Wrappers and Containers

1. Except in the case of pre-packed food to which paragraph (2) of this Regulation applies, no person shall sell by retail or have in his possession for sale by retail any pre-packed food unless the wrapper or container in which it is packed or a label securely attached thereto is properly marked, that is to say, marked in accordance with the appropriate requirements set out in the First Schedule hereto, with a true statement of the minimum quantity of the food contained therein expressed in terms:

(a) in the case of any article of food described in the Second Schedule hereto, of the number thereof;

(b) in any other case, of net weight only, of measure only or of both net weight and measure.

Sale of Pre-packed Food otherwise than by Retail. Marking of Wrappers and Containers. Furnishing of Particulars

2. Every person who, for the purposes of a sale thereof otherwise than by retail, delivers or causes to be delivered any pre-packed food shall deliver that food or cause it to be delivered packed in a wrapper or container which is marked, or to which wrapper or container is securely attached a label which is marked, in accordance with the provisions of Regulation 1 as if it were being sold by retail:

Loose Labels inserted within Wrappers or Containers

3. A label not actually attached to a wrapper or container in which food is pre-packed but inserted within the wrapper or container or, where more than one wrapper or container is used, within the outer one shall be deemed for the purposes of these Regulations to be securely attached thereto if it is inserted in such a manner that it cannot be removed without first breaking open the wrapper or container or, as the case may be, the outer one.

4. If any person contravenes or fails to comply with any of these Regulations he shall be guilty of an offence against that Regulation.

(2) A person guilty of an offence against any of these Regulations shall be liable to a fine not exceeding one hundred pounds or to imprisonment for a term

not exceeding three months, or to both, and in the case of a continuing offence, to a further fine not exceeding five pounds for each day during which the offence continues after conviction.

FIRST SCHEDULE

Requirements with Respect to the Proper Marking of Wrappers and Containers

The requirements to be complied with for the proper marking of any wrapper or container in pursuance of Regulation 1 are the following:

1. The statement of quantity in terms of weight, measure or number and the statement of aggregate weight shall be marked in legible characters in a prominent place upon the wrapper or container or label where, in each case, it can be easily read and, in the case of food pre-packed in more than one wrapper or container, the marking shall be so placed (whether upon an inner or an outer wrapper or container or upon both or upon a label securely attached to one or the other or to both) that it can be easily read without detaching or unwrapping any of the wrappers or containers.

2. (a) Subject to the provisions of sub-paragraph (b) of this paragraph, the statement shall be marked upon a plain background and in distinct contrast thereto, that is to say, shall be in dark characters on a light background or in light characters on a dark background:

Provided that, where by reason of the transparency of the wrapper, container or label, the contents thereof are visible, the said contents shall be deemed to be the background for the purposes of this paragraph.

(b) In the case of food packed in a metal, plastic, glass or papier mâché container, or a container having a stopper, lid or other sealing device made of any of those materials, the statement may be marked upon the metal, plastic, glass or papier mâché but not elsewhere) by means of embossed characters whether or not such characters are in distinct colour contrast to the background.

3. A statement of any quantity in terms of metric weight or measure shall be accompanied in close proximity thereto by a statement of that quantity in terms of its equivalent in imperial weight or measure.

5. A statement of any weight, measure or number shall not be qualified by any words, figures or other marks importing any approximation or modification in such statement (e.g. "approximately", "about", "when packed").

6. Where the weight to be indicated is the aggregate weight of the wrapper or container and the food contained therein, the designation of weight and the number of units thereof shall be followed or preceded by the word "gross" or by the words "gross weight".

7. A statement of measure on a container which is marked on the container itself, whether pursuant to paragraph 2(b) of this Schedule or otherwise, shall be expressed in terms of the appropriate designation of measure and the number of units thereof preceded by the word "contents" (e.g. contents 10 fl. oz.) or the words "minimum contents" (e.g. contents 10 fl. oz.).

SECOND SCHEDULE

Cereal biscuit breakfast food.
Corn on cob packed without added liquid.
Fruit preservative tablets.
Rennet tablets.
Saccharin tablets.
Shell eggs.
Soft drink tablets.
Sweetening tablets.
Vanilla pods.

1963 LEGISLATION

Additional weights and measures legislation has recently been passed by the English Parliament.

Pertinent provisions follow:

Part IV. Regulation of certain transactions in goods

21. (2) The Board may by order make provision with respect to any goods specified in the order for all or any of the following purposes, that is to say, to ensure that, except in such cases or in such circumstances as may be so specified, the goods in question—

- (a) are sold only by quantity expressed in such manner as may be so specified; or
 - (b) are pre-packed, or are otherwise made up in or on a container for sale or for delivery after sale, only if the container is marked with such information as to the quantity of the goods as may be so specified; or
 - (c) are sold, or are pre-packed, or are otherwise made up in or on a container for sale or for delivery after sale, or are made for sale, only in such quantities as may be so specified; or
 - (d) are not sold without the quantity sold expressed as aforesaid being made known to the buyer at or before such time as may be so specified; or
 - (e) are sold by means of, or are offered or exposed for sale in, a vending machine only if there is displayed on or in the machine—
 - (i) such information as to the quantity of the goods in question comprised in each item for sale by means of that machine as may be so specified; and
 - (ii) a statement of the name and address of the seller; or
- (3) An order under subsection (2) of this section may be made with respect to any goods, including goods to which any of the provisions of any of the Schedules aforesaid applies, and may—
- (a) make provision for any of the purposes mentioned in the said subsection (2) in such manner, whether by means of amending, or of applying with or without modifications, or of excluding the application in whole or in part of, any provision of this Act or of any previous order under the said subsection (2) or otherwise,
 - (b) make such, if any, different provision for retail and other sales respectively, and
 - (c) contain such consequential, incidental or supplementary provision, whether by such means as aforesaid or otherwise, as may appear to the Board to be expedient, and may in particular make provision in respect to contraventions of the order for which no penalty is provided by this Act for the imposition of penalties not exceeding those provided by section 52¹² of this Act for an offence under this Act.
- (4) The Board may make regulations—
- (a) as to the manner in which any container required by any of the provisions of any of the Schedules aforesaid or of any order under subsection (2) of this section to be marked with information as to the quantity of the goods made up therein is to be so marked;
 - (b) as to the manner in which any information required by any such provision as aforesaid to be displayed on or in a vending machine is to be so displayed;
 - (c) as to the conditions which must be satisfied in marking with information as to the quantity of goods made up therein the container in or on which any goods are made up for sale (whether by way of prepacking or otherwise) where those goods are goods on a sale of which (whether any sale or a sale of any particular description) the quantity of the goods sold is required by any such provision as aforesaid to be made known to the buyer at or before a particular time;
 - (d) as to the units of measurement to be used in marking any such container or machine as aforesaid with any information as to quantity;
 - (e) for securing, in the case of pre-packed goods, that the container is so marked as to enable the packer to be identified;
 - (f) as to the method by which and conditions under which quantity is to be determined in connection with any information with respect thereto required by or under this section;
 - (g) permitting in the case of such goods and in such circumstances as may be specified in the regulations the weight of such articles used in making up the goods for sale as may be so specified to be included in the net weight of the goods for the purposes of this Act; and any person who contravenes any regulation made under this subsection otherwise than by virtue of paragraph (f) or (g) thereof shall be guilty of an offence.¹³
22. (2) Subject to the provisions of this Part of this Act, in the case of any goods required by or under this Act to be pre-packed, or to be otherwise made up in or on a container for sale or for delivery after sale, or to be made for sale, only in particular quantities, or to be pre-packed, or to be otherwise made up as

¹² See p. 22.

aforsaid, only if the container is marked with particular information, any person shall be guilty of an offence who—

(a) whether on his own behalf or on behalf of another person, has in his possession for sale, sells or agrees to sell, or

(b) except in the course of carriage of the goods for reward has in his possession for delivery after sale, or

(c) causes or suffers any other person to have in his possession for sale or for delivery after sale, sell or agree to sell on behalf of the first-mentioned person, any such goods pre-packed, otherwise made up as aforesaid or made otherwise than in that quantity or otherwise than in or on a container so marked, as the case may be, whether the sale is, or is to be, by retail or otherwise.

24. (2) Subject to the provisions of this Part of this Act, any person who, on or in connection with the sale or purchase of any goods, or in exposing or offering any goods for sale, or in purporting to make known to the buyer thereof the quantity of any goods sold, or in offering to purchase any goods, makes any misrepresentation either by word of mouth or otherwise as to the quantity of the goods, or does any other act calculated to mislead a person buying or selling the goods as to the quantity thereof, shall be guilty of an offence.

Part VI. Miscellaneous and general

48. (2) Subject to the production if so requested of his credentials, an inspector may at any time within the area aforesaid seize and detain any article which he has reasonable cause to believe is liable to be forfeited under this Act.

52. (1) Any person guilty of an offence under any of the following provisions of this Act, that is to say, sections 10(5), 11(2), 11(6), 12(2), 12(3), 13(3), 13(4), 14(1), 14(3), 18(3), 20(2), 20(4), 20(5), 31 and 49(1), paragraphs 4 and 5 of Schedule 5 and paragraph 20(2) of Schedule 6, shall be liable on summary conviction to a fine not exceeding twenty pounds.

(2) Any person guilty of an offence under any provision of this Act other than those mentioned in the foregoing subsection shall be liable on summary conviction to a fine not exceeding one hundred pounds (or, in the case of a second or any subsequent offence under the same provision, two hundred and fifty pounds), or to imprisonment for a term not exceeding three months, or to both.

SCHEDULE 4

Part VIII. Miscellaneous foods to be sold by or marked with net weight and to be pre-packed only in fixed quantities

1. This Part of this Schedule applies to the following foods, that is to say—

(a) cereal breakfast foods in flake form, other than cereal biscuit breakfast foods;

(b) tea, cocoa (including cocoa powder and chocolate powder) and coffee (including coffee beans, coffee powders of all kinds, ground coffee and mixtures of coffee and chicory other than such mixtures in the form of liquid essences);

(c) honey, other than chunk honey;

(d) jam and marmalade, other than diabetic jam or marmalade;

(e) jelly preserves;

(f) molasses, syrup and treacle;

(g) salt, other than cut lump salt;

(h) sugar of the following prescriptions, that is to say, caster, granulated, cube and icing;

(i) dried vegetables of any of the following descriptions, that is to say, beans, lentils and peas (including split peas);

(j) barley kernels, pearl barley, rice (including ground rice and rice flakes), sago, semolina and tapioca;

(k) flour of bean, maize, oats, pea, rice, ryes, soya bean or wheat;

(l) flour products of any of the following descriptions, that is to say—

(i) cake flour, other than cake mixtures and sponge mixtures;

(ii) cornflour, other than blancmange powders and custard powders;

(iii) macaroni and similar products;

(iv) self-raising flour.

3. Subject to paragraph 4 of this Part of this Schedule, goods to which this Part of this Schedule applies shall be pre-packed only if—

¹³ See p. 22, Schedule 4, Part VI, Sec. 52 (1), (2).

(a) they are made up in one of the following quantities by net weight, that is to say, one, two, four, eight or twelve ounces, one pound, one and a half pounds, or a multiple of one pound; and

(b) the container is marked with an indication of quantity by net weight.

4. There shall be exempted from all requirements of paragraphs 2 and 3 of this Part of this Schedule—

(a) honey in comb;

(b) any other goods in a quantity of less than half an ounce;

and there shall be exempted from the requirements of sub-paragraph (a) of the said paragraph 3 cereal breakfast foods pre-packed in a quantity not exceeding one and a quarter ounces, and dried vegetables pre-packed in a quantity not exceeding three ounces.

Part IX. Miscellaneous foods to be pre-packed only when marked with net weight and in fixed quantities and to be otherwise sold by net weight or gross weight

1. This Part of this Schedule applies to the following foods, that is to say—

(a) butter, compound cooking fat, dripping, lard, margarine, shredded suet and any mixture of butter and margarine;

(b) dried fruits of any one or more of the following descriptions, that is to say, apples (including dried apple rings), apricots, currants, dates, figs, muscatels, nectarines, peaches, pears (including dried pear rings), prunes, raisins and sultanas;

(c) dried fruit salad;

(d) oatflakes, oatmeal and rolled oats;

(e) sugar, other than caster, granulated, cube or icing sugar.

2. Subject to paragraph 4 of this Part of this Schedule, goods to which this Part of this Schedule applies which are not pre-packed shall be sold by retail only—

(a) by net weight; or

(b) if sold in a container which does not exceed the appropriate permitted weight specified, in the case of any of the foods mentioned in sub-paragraph (a) of the foregoing paragraph, in Table A or, in any other case, in Table B of Part XII of this Schedule, either by net weight or by gross weight.¹⁴

3. Subject to paragraph 4 of this Part of this Schedule, goods to which this Part of this Schedule applies shall be pre-packed only if—

(a) they are made up in one of the following quantities, that is to say, two, four, eight or twelve ounces, one pound, one and a half pounds, or a multiple of one pound; and

(b) the container is marked with an indication of quantity, being in each case quantity by net weight.

4. There shall be exempted from all requirements of this Part of this Schedule any goods in a quantity of less than one ounce.

Part X. Miscellaneous foods to be marked when pre-packed with quantity by number

1. This Part of this Schedule applies to foods of any of the following descriptions, that is to say—

(a) cereal biscuit breakfast foods, other than foods in the case of which none of the biscuits weighs more than one-third of an ounce;

(b) fruit preservative tablets, rennet tablets, saccharin tablets, soft drink tablets and sweetening tablets;

(c) shell eggs;

(d) vanilla pods.

2. Goods to which this Part of this Schedule applies shall be pre-packed only if the container is marked with an indication of quantity by number:

Provided that there shall be exempted from the requirements of this paragraph—

(a) shell eggs pre-packed in a quantity of not more than six, if the container is such that all the eggs can be clearly seen by a prospective purchaser;

(b) any goods in a quantity by number of one.

¹⁴ Table A permits 2½ drams container weight for each pound gross weight. Table B is graduated, permitting 4½ drams container weight for the first pound of gross weight, 4 drams per pound (of gross weight) for a gross weight between 1 and 2 pounds, 3 drams per pound for a gross weight between 2 and 4 pounds, and 2½ drams per pound for a gross weight exceeding 4 pounds.

Part XI. Other pre-packed foods

1. This Part of this Schedule applies to foods of any description which are not goods—

(a) required by or under any other provision of this Act to be pre-packed only if the container is marked with an indication of quantity; or

(b) in the case of which when sold pre-packed (whether on any sale or on a sale of any particular description) the quantity of the goods sold expressed in a particular manner is required by or under any other provision of this Act to be made known to the buyer at or before a particular time; or

(c) expressly exempted by any such provision from all such requirements which would otherwise apply thereto.

2. Subject to paragraph 3 of this Part of this Schedule, goods to which this Part of this Schedule applies shall be pre-packed only if the container is marked with an indication of quantity either by net weight or by capacity measurement.

3. The following shall be exempted from the requirements of this Part of this Schedule, that is to say—

(3) condensed milk (including evaporated milk) and dried milk;

(11) soft drinks of any description in a syphon or in a quantity of less than five fluid ounces;

(12) sugar and chocolate confectionery of any of the following descriptions, that is to say—

(a) Easter eggs;

(b) figurines of chocolate or of sugar;

(c) rock or barley sugar in sticks or novelty shapes;

(d) single articles weighing less than three ounces;

(e) a collection of articles each of which is either an article such as is mentioned in paragraph (a), (b), (c) or (d) of this sub-paragraph or an article in a container marked with an indication of quantity by net weight;

(13) goods of any other description in a quantity of less than one ounce or of less than one fluid ounce.

SCHEDULE 7

Part V. Perfumery and toilet preparations

1. This Part of this Schedule applies to goods of any of the following descriptions, that is to say—

(a) perfumes and toilet waters;

(b) other toilet preparations for use on the hair or scalp of human beings;

(c) other toilet preparations for external use on any other part of the human body; and

(d) dentifrices,

whether in liquid, solid or any other form, including any such goods which are medicated but are not pharmaceutical preparations, but excluding soap in any form.

2. Goods to which this Part of this Schedule applies shall be pre-packed only if the container is marked with an indication of quantity either by net weight or by volume:

Provided that there shall be exempted from the requirements of this paragraph—

(a) any goods such as are mentioned in sub-paragraph (a) of the foregoing paragraph in a quantity not exceeding twelve grammes or not exceeding twenty cubic centimetres;

(b) any goods such as are mentioned in sub-paragraph (b) of the foregoing paragraph in a quantity not exceeding twenty grammes or not exceeding twenty cubic centimetres;

(c) any goods such as are mentioned in sub-paragraph (c) or (d) of the foregoing paragraph in a quantity not exceeding twelve grammes or not exceeding twelve cubic centimetres.

Part VI. Soap

1. Subject to paragraph 2 of this Part of this Schedule—
 - (a) soap in the form of a cake, tablet or bar shall be pre-packed only if the container is marked with an indication of quantity by net weight;
 - (b) liquid soap shall be pre-packed only if the container is marked with an indication of quantity by capacity measurement;
 - (c) soap in any other form—
 - (i) unless pre-packed, shall be sold by retail only by net weight;
 - (ii) shall be pre-packed only if the container is marked with an indication of quantity by net weight.
2. There shall be exempted from the requirements of this Part of this Schedule—
 - (a) liquid soap in a quantity of less than five fluid ounces;
 - (b) soap in any other form in a quantity of less than one ounce.

C. ITALY

A. SURVEY OF LEGAL SOURCES

No specific statute on packaging and labeling practices could be found in the Italian law collections. Many scattered regulations on the subject are incorporated into different laws primarily dealing with fraud in the manufacture and sale of goods, and particularly in those governing the production and sale of foodstuffs.

The basic law still remains the Royal Decree No. 2033 of October 15, 1924, as amended, and the Regulation No. 1361 of July 1, 1926, enforcing this Law. Subsequently, numerous laws and decrees dealing with a variety of products, not previously regulated, were adopted.

The translation of some pertinent provisions is given in the following:

B. TRANSLATION OF PERTINENT PROVISIONS

1. Royal Decree Law No. 2033 of October 15, 1925. Suppression of Fraud in the Manufacture and Sale of Goods for Farm Use and Farm Products as Amended (*Repressione delle frodi nella preparazione e nel commercio di sostanze di uso agrario e di prodotti agrari*). Off. Gaz. No. 281, 1925.

*Section 13 * * * par. 5.* In stores selling wine to consumers, notices must be placed in a visible manner with clear letters easily legible, showing the alcoholic content of the wine for sale.

Similar information must be placed on all containers from which wine is served on the spot as well as on all other containers on the selling premises or on the containers of wine prepared for retail sale.

* * * * *

*Section 32. * * * par. 3.* Cheese manufactured from milk other than from sheep, or only partly from sheep's milk, manufactured in shapes not exceeding 3 kilograms in weight and showing some exterior characteristics similar to those of sheep's-milk cheese, shall be called cow's cheese (*formaggio vacchino*).

A cheese defined as cow's cheese pursuant to the foregoing paragraph, even if imported or intended for export, cannot be put on sale unless furnished with a stamp carrying the legend "cow" (*vacchino*).

Such a legend, which must have dimensions of 4 centimeters in height, 15 centimeters in length, and 0.5 centimeters in depth, shall be pressed on the bottom of the shapes and repeated so as to cover the entire length of the bottom.

Section 33. Whoever manufactures, sells, offers for sale, or in any other way places cheese on the market, must specify its fat content in the manner established by the Regulation.

Section 47. Whoever sells, offers for sale, or in any other way places on the market or, based upon contractual obligation, furnishes his business associates with substances and products specified in the present Decree without making statements and giving information or [acts] contrary to the prohibitions and limitations stated in the present Decree and the Regulation enforcing it, shall be punished by a fine of not less than 50,000 nor more than one million liras.

* * * * *

2. Royal Decree No. 1361 of July 1, 1926. Regulation Concerning the Enforcement of the Royal Decree No. 2033 of October 15, 1925 on the Suppression of Fraud in the Manufacture and Sale of Goods for Farm Use and Farm Products, as Amended (*Regolamento per l'esecuzione del R.D. 15 ottobre 1925, no. 2033, concernente la repressione delle frodi nella preparazione e nel commercio di sostanze di uso agrario e di prodotti agrari*). Off. Gaz. No. 189, 1926.

Section 5. The information prescribed for goods and products placed on the market in casks, barrels, cans and other containers or in bags, linen and paper bags, or in other wrappings, must be repeated on the containers, bags and wrappings, as follows:

(a) on casks, barrels, boxes and any other containers or wooden packing, the information must be burned or marked by some other indelible means;

(b) on cans or in general on metal containers the information must be painted on with oil paints or stamped on in some other indelible way;

(c) on bags or other similar wrappings the information must be stamped in an obvious way and clearly legible.

* * * * *

(d) on glass containers the information must be given on strong labels firmly attached to the container;

(e) on bags, paper bags, and on paper wrappings in general, the information must be printed on the paper itself. However, information stamped on with aniline ink or handwritten, provided it is clear and indelible, shall also be allowed.

When different goods, contained in separate containers, are packaged together, it is not necessary to repeat on such package the diverse information given on the individual containers.

Section 6. The directions specified in the foregoing section must be written in clearly visible letters and in any case it may not be less obvious than any other directions placed on the containers, bags, wrappings and the like.

As a rule, along with the directions already prescribed, no others shall be allowed except for those relating to the first and last name or firm of the manufacturer, the importer, or the seller, his residence, the net and gross weight of each bag or container or relating to a trademark or warranty, when such exists, and should not tend to lead the buyer into error as to the nature of the merchandise. However, products sold in cans or other closed containers or wrappings shall be allowed to bear also particular illustrations relating to the contents of the cans themselves.

Insecticides, seed and mixed fertilizers may also bear on their containers or wrappings instructions pertaining to the use of the product contained therein.

Section 7. The directions placed directly on the merchandise must be affixed by means of stamps, with deeply incised letters and not be less visible than any other directions on the same merchandise. No other directions shall be allowed except those specified in the foregoing section.

Section 8. Whoever keeps merchandise specified in the Decree-Law for sales purposes, is obliged to see to it that the statements and the directions prescribed by the same Decree-Law and the present Regulation are always clearly legible.

Section 9. When portions of goods contained in a bag, container, wrapping or in an original form are placed on sale, it is not necessary to repeat the directions on the portion sold; but in the store a sign with the description of the merchandise, the pertinent statements and the price of all the merchandise must be displayed.

Section 10. The directions to be affixed outside and inside the production or sales premises of some products pursuant to the Decree-Law, must be shown on suitable signs solidly attached to the wall or the door of the premises, with letters at least ten centimeters high in black on a white background.

No other specifications except those prescribed for each sales item should appear on the sign. However, on sales premises also the words "for sale" and the price are allowed.

Section 12. Imported wine, oil, butter and syrups shall be sold in the Republic under their original name.

Section 34. When an antiparasite product is put on the market with a particular name other than that specified in the Decree-Law and the present Regulation, such name may always be added to the information provided it does not tend to lead the buyer into error as to the nature of the product.

Section 37. The information specified in the foregoing sections concerning seed sold on the public market must be repeated on clearly visible labels to be placed on goods for sale. On the same label must also be indicated the origin of the seed.

Section 83. Margarine cheese must be colored on the outside and over the entire surface with victory-red coloring matter (*rosso-Vittoria*).

Such coloring must be applied before the cheese leaves the manufacturer's storehouse and is delivered or displayed to the public. If ensuing conditions should obliterate, alter or lighten the coloring, the holder of the margarine cheese shall be obliged to restore it promptly.

3. Royal Decree No. 45 of February 3, 1901. General Health Regulation (*Regolamento generale sanitario*). Off. Gaz. No. 44, 1901.

Section 108. Alimentary products and beverages which do not correspond in their nature, substance and quality to the description by which they are designated or requested as well as alimentary products and beverages which are partly deprived of their own nutritious contents or mixed with material of an inferior quality or in any other way treated in such a manner as to alter their natural composition shall be considered altered.

The sale of food or beverages shall be permitted when they are clearly supplied with written information concerning the changes they have undergone.

4. Royal Decree No. 1548 of July 7, 1927. Provisions Concerning the Manufacture, Import and Trade of Products of the Fishing Industry, Preserved in Containers (*Norme per la fabbricazione, l'importazione e il commercio dei prodotti alimentari della pesca conservati in recipienti*). Off. Gaz. No. 204, 1927.

Section 4. It is forbidden to put on the market or in any other way to use for consumption products of the fishing industry, in cans or other containers unless the same bear the following specific statements concerning:

- (a) the contents;
- (b) the quality of oil and other substances used for preservation;
- (c) the net weight of the contents;
- (d) the name of the producer;
- (e) the place of manufacture.

The above statements shall be made in raised letters or lithography in an indelible manner on metal containers, burned on those of wood, and in raised letters on those of glass.

The labels, signs and information or marks placed on the containers shall not cover or hide obligatory statements as specified in the above letters (a-e), or be inconsistent therewith.

All obligatory statements prescribed in the present section must also appear on wrappings of any kind, in which the same containers are eventually wrapped.

Section 6. Pursuant to the present Decree containers of preserved fish may not bear the name "sardine" except for the "*Clupea Pilchardus*," and the name "anchovy" except for the "*engraulis encrasicolus*."

The appellation tuna fish shall appear only on the species "*oryxymus tynnus*." For the species "*tynnus alelonga*" (*germon*) and for the species "*pelamys*" (*bonito*) the appellation white tuna fish (*tonno bianco*) and *tonnetto* must be employed, respectively.

5. Royal Decree No. 904 of June 23, 1932. Approval of the Regulation on the Application of Law No. 368 of March 17, 1932, Govern-

ing the Types of Flour and Bread (*Approvazione del regolamento per l'applicazione della legge 17 marzo 1932 no. 368 che disciplina i tipi di farina e di pane*). Off. Gaz. No. 182, 1932.

Sec. 6. The labels which must be placed on bags of flour, in accordance with the provision of Section 5 of the Law, must bear, in addition to the name of the mill producer firm, the legend:

flour type 00
flour type 0
flour type 1
flour type 2

according to the quality of the product contained in the bags. The seals attached in order to guarantee that the bags are properly closed must bear the name of the mill firm pressed on in [clearly] decipherable manner.

D. FRANCE

INTRODUCTION

The bulk of the French regulatory provisions concerning packaging and containers forms a part of the general regulation on food products as contained in the law of August 1, 1905.

This basic law, which also deals with the repression of fraud, deception, and misrepresentation in the sale of goods, underwent several changes in the course of the years by the laws of August 5, 1908, July 28, 1912, by the decrees of April 15, 1912, and of June 28, 1912, by the laws of May 6, 1919, July 29, 1929, the decree of June 14, 1938, the law of February 11, 1951, and finally by the law on finance of April 14, 1952, which have been followed by numerous decisions and administrative orders up to very recent times. These scattered enactments and issuances have been compiled or surveyed in systematic collections and extensive studies.¹⁵

Briefly stated according to the 1905 law deceit occurs whenever one party fails to fulfill what has been agreed upon in trade transactions. And, misrepresentation occurs whenever, to the detriment of the buyer, a process or an operation tends to deteriorate the advertised contents of an item, or it is manufactured or introduced with the appearance of an already known and determined item although it does not have the same elements and form.

LEGAL PROTECTION

Although in Europe advertising is not as highly developed and the packaging industry is not so advanced as in this country, yet, in France the courts and administrative organs are provided with sufficient legislation to counteract misleading information and misrepresentation and, consequently, civil and penal sanctions may be enforced against those who commit abuses.

In France, as elsewhere, it is felt that the packaging contributes greatly to the sale of a product and, therefore, every manufacturer and merchant has a legitimate desire to see that his unique packaging is not used by his competitors to mislead the public.

¹⁵ R. Lefaux. *Emballage et conditionnement modernes*, Paris, 1960; also, R. Dehove (Inspector General of the Services for the Repression of Fraud at the French Ministry of Agriculture). *Le réglementation des produits alimentaires et non alimentaires et la repression des fraudes*, Paris, 1955.

A. Protection of manufacturer

Under French legislation a manufacturer is provided with the means to protect himself against such competitors and third persons who try to steal his ideas. The law on trademarks protects his product; the characteristics of packaging and labeling, although not a part of the trademark, are protected from imitation by third persons by the provisions dealing with unfair practices and competition. This protection covers packaging insofar as the imitation of its characteristics is concerned. In fact, whoever copies such characteristic features from a competitor acts in contravention of good faith and becomes guilty of unfair competition.¹⁶ However, the elements of any packaging which do not fall within these protected areas¹⁷ may be copied provided this is not done for the purpose of confusing or deceiving the consumers or damaging the interests of a given person or enterprise.¹⁸

Another means of protection is the law on designs and industrial models which applies also to packaging and its new esthetic effects for a certain length of time.¹⁹

The owner of certain original packaging must, to a certain extent, tolerate the danger of confusion deriving from imitations especially when the imitation has become necessary due to the use made of certain products. In other words, as long as the different elements of packaging are determined by the nature of the product, by its use or by its manner of manufacture, these elements may be utilized by others. But, the more the creator of a certain packaging has characterized it by original elements, the more others should beware of imitating it in order to avoid the danger of confusion.

And according to most recent case law packaging, in many cases, may be protected from imitation even when its composing elements are not original provided that the packaging, although lacking in originality, has become so distinct that the public considers that the product comes from a certain manufacturer.

French statutes and regulations are very detailed in prescribing the type of labeling, color, and paper, etc. For instance, for alcoholic beverages a label of yellow gold paper is reserved for brandies of a certain type and region, whenever it is kept in separate storehouses. However, such brandies lose the right to this type of labeling when put together with other alcoholic beverages. Labels of other colors are reserved for other types of brandies.²⁰

In the field of food, the following example is illustrative of the type of control exercised by the French statutes. Articles 5 and 7 of the law of December 19, 1910, provide that the word "honey" may not be used for any product except that made by bees. Even during a normal period of production, if the bees are fed with sugar or sugar substances other than honey, the product obtained must be named sugar honey; also, the word "honey" may not be used when this product has been used for caramels if it has been diluted by 25 percent,

¹⁶ Dalloz. *Répertoire de droit commercial*, v. I, Paris, 1957, pp. 554-568.

¹⁷ To claim protection for packaging, one must prove that when used for the first time it was absolutely new. (See M. Quetard. *Étude générale sur les emballages*, Paris, 1949, p. 277.)

¹⁸ Law of Aug. 1, 1905, as amended, Code de Commerce.

¹⁹ Lois Dessins et Modèles, Institut National de la Propriété Industrielle, Paris, 1958.

²⁰ R. Dehove. *La réglementation des produits alimentaires et non alimentaires et la repression des fraudes*, Paris, 1955, pp. 322-405.

nor may it be used in any other manner if the product has been adulterated. The law expressly forbids such abuses and punishes them as a fraud. To make the use of this term even clearer, decision No. 56 of the Council of Ministers of July 25, 1921, ordered that even the term "mieliné" (honeyed) may not be used under these circumstances.

French legislation in this field goes so far as to provide precise regulations for livestock fodder, and article 3 of the law of February 3, 1949, requires the approval of the Ministry of Agriculture for all labeling, cataloging, prospectuses, and other advertising forms before they can be used on products.

B. Protection of consumers

As in the case of the legal protection given by French legislation to manufacturers and merchants for their own ideas in the field of packaging, labeling, advertising, etc., this legislation also provides specific provisions aiming exclusively at the protection of consumers. As was seen *supra*, and will be seen in the summaries and translated statutes, courts and administrative organs are provided with general legal provisions and regulations to strike at fraudulent and unfair practices against manufacturers and merchants for the misleading and deceptive labeling of items in packaging and advertising. According to French legal writers, the law of 1930, which provides the basic principle, gives the courts the power to pass judgment on misleading information in the presenting, introducing, packaging, and labeling of goods.²¹

The law of August 1, 1905, provides the public administration in the executive branch of the Government and the local organs with the power to issue regulations concerning the measures to be taken for the enforcement of the law²² while the law of April 5, 1884, grants them regulatory powers in fields not covered by the general rules laid down by the laws and decrees or any other statutes dealing with the subject.²³

TRANSLATION OF PERTINENT LEGAL TEXTS AND SUMMARIES OF STATUTES

*Deception and attempt to deceive*²⁴

Art. 1. Whoever deceives or attempts to deceive, be it in regard to the nature, primary qualities, composition and care of all goods, their type and origin, and attributes false designations to goods * * * or to the quantity of items to be delivered, or delivers goods other than those which are subject to a contract, shall be punished by imprisonment for from three months to one year or by a fine of from 100 to 5,000 francs or both.

Art. 2. The prison penalty for the offenses provided for in the preceding article [Art. 1] shall be increased to two years if the offense or the attempt to commit such an offense concerns weights and measures or other false or inexact means involved, and practices tending to falsify an analysis or the components of it, or the weight, measurements, or volume of any item, or whenever fraudulent indications are given tending to indicate previous exact operations were made, or falsely claiming that official supervision existed.

²¹ R. Dehove. *La réglementation des produits alimentaires et non alimentaires et la repression des fraudes*, Paris, 1955, p. 52; also Dalloz. *Répertoire de droit commercial*, v. I, pp. 555-568.

²² Art. 11 of the law of Aug. 1, 1905, as amended by the law of June 29, 1907.

²³ Arts. 94, 97, and 99 of the law of Apr. 5, 1884.

²⁴ Law of Aug. 1, 1905, as amended and implemented; also Dehove, R., *op. cit.*, pp. 1-19; also Lefaux, R., *op. cit.*, pp. 210-249.

Regulations of the public administration and their regulatory powers

Art. 11. In regard to the proper measures to be taken in enforcing this law, regulations shall be issued by the administrative bodies (organs) concerning: (1) the sale and putting on sale, displaying and holding of all goods covered by this law; (2) the inscription or marks indicating either the composition or origin of goods which, in the interest of consumers and as a warranty from vendors, shall appear on the packaging of the goods or on the goods themselves, on the outward indicia, the manner of presentation necessary to assure a fair sale or putting on sale, as well as the special marks which may be attached or which it is obligatory to attach to French goods for export. The definition and denomination of beverages, commodities and products shall be made in accordance with trade practices, on the basis of the permissible characteristics which they may possess because of their manufacture and methods of preserving the features which render them suitable for consumption * * * [irrelevant].²⁵

Texts of general statutes completing the law of August 1, 1905

Mayors as well as prefects are empowered to supervise the proper sale of goods, i.e., in regard to their weight or volume, size, and condition. Moreover, mayors are empowered to issue orders applicable only to certain objects subject to their authority and supervision, in addition to the general rules.²⁶

The law of July 22, 1948, provides for the creation of organs for any branch of activity whenever the public need so requires, the so-called Technical-Industrial Centers (*Centres Techniques Industrielles*) which, within the frame of the existing legislation, participate in the establishment of rules for the control of quality (arts. 1 and 2).

In the absence of regulations issued by the public administrative organs as provided for in the law of August 1, 1905, the practices of a specific trade generally supply the norms in that field.²⁷

Price marking

Article 33 of the Government order of June 30, 1945, requires that the prices of goods of any kind be clearly marked by means of labeling, ticketing, and similar displays.²⁸

In principle, imported goods must also conform to the regulations in force by making any false marking or advertising punishable.²⁹ Exported French goods must generally meet the requirements prescribed for domestic sale, although, exceptions are sometimes made to preserve the French trade from inferior conditions provided the products meet the requirements of the countries to which they are exported.³⁰

*Labeling of goods*³¹

(1) Regulations of a general nature:

(a) Generic denomination.

According to French law the name applied to all goods and products having common features and character, regardless of the manu-

²⁵ Law on the Repression of Fraud and Falsifications of Aug. 1, 1905, as amended. According to art. 13 of this law, certain violations of the regulations, where the good faith of the violator has been proved, shall not be considered crimes but culpable negligence and shall be punished as petty offenses by the police. But in case of recidivism the court of petty sessions (*tribunal correctionnelle*) shall have jurisdiction.

²⁶ Arts. 94, 97, and 99 of the law of Apr. 5, 1884.

²⁷ R. Dehove. *La réglementation des produits alimentaires et non alimentaires et la repression des fraudes*, Paris, 1955, p. 8.

²⁸ This order was amended by another order issued on the basis of arts. 15-17 of the decree of Nov. 22, 1938, which is even more explicit in regard to the exactness of price marking of goods of any kind.

²⁹ Law of Mar. 26, 1930, and law of Apr. 20, 1932; see also R. Dehove, op. cit., p. 12.

³⁰ Decree of May 14, 1938.

³¹ R. Dehove, op. cit., pp. 49-51.

facturer or vendor, is called a generic denomination, and is designed essentially to inform the buyer of the nature, kind, and use of the goods.

The labeling and description containing this denomination should be in visible characters, not abbreviated, and the size of the typographical characters is to be specified in regulations issued for the purpose.

(b) Fancy advertising.

Fancy advertising and commercial marks which, contrary to the generic naming and labeling, are particular to each manufacturer or vendor, may be put on the packaging, but it is essential that they should not be confused with the general and regular labeling, and, above all, they should not lead to confusion regarding the real nature of the product to which they are applied.

(c) Name and address of the manufacturer or vendor.

The affixing of the manufacturer's name and address is generally made obligatory by special regulations. However, the name may be replaced sometimes by the name of the firm, and, in rare instances, by code indications. In general, the manufacturer or the vendor is held, out of honesty and self-respect, to make the information on the labels of products clear even when this is not obligatory.

*Weight indications*³²

Article 5 of the decree of April 15, 1912, stipulates that in commercial establishments the net and gross weight and the tare of merchandise should be clearly indicated on the packages and containers:

Whenever the net weight of products is known by the manufacturer or merchant who packaged them or may be easily ascertained by him, regulations require that an indication of the net weight and this weight alone shall be given. Exceptions are made when this is impossible and, in such cases, the manufacturer or merchant shall indicate the net weight, the gross weight, and the tare.³³

Thus, whenever only one weight is shown without specification, it is considered to be the real weight of the item, i.e., the net weight. Under French law, whenever a buyer has good reason to believe that the indication stands for the net weight of the merchandise and it is false, this shall constitute an attempt to deceive, and may be prosecuted as fraud.³⁴ On the other hand, the indication of the gross weight only without the tare is also insufficient.

The indication of the weight is obligatory only for the permanent packages containing items for further retail or wholesale trade, and is unnecessary for temporary packages.

Products in de luxe packages should be considered as sold separately for it seems that the buyer in such cases gives less importance to the quantity delivered than to the manner in which they are presented. Also, it should be added that weight is irrelevant in packages of small dimensions which are given away or sold as samples.³⁵

In addition to permanent, de luxe, and temporary packaging, French legislation provides also for another type of packaging called *Emballages perdus* (disposable packaging). This refers to the kind of packaging, technically designed to be used once only, such as the contain-

³² R. Dehove, op. cit., pp. 50-51.

³³ Order No. 25 of Apr. 15, 1912.

³⁴ Order No. 9 of Sept. 5, 1908.

³⁵ Order No. 21 of Nov. 1, 1912.

ers for fruits and vegetables which are sufficiently resistant to reach the sale's destination in good condition (art. 1 of the decision of Mar. 8, 1951). This statute provides that the reuse of this type of packaging is forbidden and this must be clearly stated on the label by the letters E.P. (standing for "Reuse Forbidden") in indelible red together with the name of the shipper and the place of origin.

Information and advertising leading to confusion

Art. 6. The use of all information, advertising, or any other form or sign likely to create confusion in the mind of the buyer regarding weight, volume, size, nature and origin of foodstuffs, beverages, etc., shall be forbidden under all circumstances and forms especially in regard to:

- (1) packaging;
- (2) labeling, capsules, seals, signs and any other wrappings;
- (3) all commercial papers, invoices, catalogs, prospectuses, prices, signs, placards, boards and any other form of advertising.³⁶

E. SWEDEN

The problem of advertising, labeling, and packaging of goods so as to give consumers correct and full information as to their quality and price has been under discussion many times by various Government agencies and committees as well as by organizations of merchants and consumers. The measures actually taken in this matter, which is considered of primary importance in Sweden, may be divided into two groups:

- (1) statutory provisions and regulations of Government agencies; and
- (2) steps taken pursuant to agreements between central organizations of merchants and consumers (trade unions and other organizations of wage earners) or by organizations of businessmen on their own initiative or on the initiative of the Government, or special agencies acting on a voluntary basis and consisting of representatives appointed by organizations of businessmen and consumers.

A. STATUTORY PROVISIONS

A general law applicable in this field is the Law for the Prevention of Unfair Competition (*Lag med vissa bestämmelser mot illojal konkurrens*) of May 29, 1931,³⁷ sections 1 and 9, as amended by the law of May 22, 1942, which reads as follows:

Sec. 1. Whoever, in carrying on his business, supplies false information about his merchandise by means of a placard, an advertisement, circular letter, prospectus or price list or in any other communication intended to reach a large number of people, and if this information is clearly contrary to fair business principles concerning the business itself or the goods offered for sale, or if the false information is calculated to give the impression of a good bargain, provided he was aware or should have been aware of the misrepresentation in his communication, shall be punished by a fine for unfair advertising, or in particularly grave circumstances, by confinement for a period not to exceed one year; he shall furthermore be liable for the damage caused.

³⁶ Decree of Apr. 15, 1912, as amended by the law of Mar. 26, 1930.

³⁷ *Sveriges Rikes Lag* (The Law of Sweden) S 21, Stockholm, Norstedt & Söner, 1961: 892-894.

The same punishment shall be inflicted upon a person who, while employed in or working for the business of another person, independently carries out the advertising mentioned in paragraph 1.

In the meaning of this section communication shall likewise be understood to include representation in illustrations or through other special arrangements.

Sec. 9. Whoever, in carrying on business activities, uses a name, firm, trademark, makeup, or other mark which may be easily confused with a mark previously used for some other business enterprise or goods or production of this enterprise, provided he does so with the intention of causing such confusion, shall be punished by a fine, or, in particularly grave circumstances, by confinement for a period not to exceed one year if the offense committed by him is not subject to severer punishment according to other laws; he shall furthermore be liable for the damage caused.

Special laws on the labeling and packaging of food and drugs are in force.

The Law on Comestibles (*Livsmedelstadga*) of December 21, 1951,⁸⁸ contains the following provisions:

Sec. 27. If, according to the present law, comestibles or jars, bottles and containers or cartons in which comestibles are sold, are to be marked with some information or inscription, the information or inscription shall be placed on the food or package or label in a clear, conspicuous and durable manner.

Sec. 28. If the packaged comestibles are sold in retail shops the packages shall be marked with the following information:

1. name of contents;
2. name, firm, and residence of manufacturer, packager, and seller;
3. weight of contents at time of packing.

If the contents are liquid, the volume shall be marked.

The gross weight shall not be given on the package.

Sec. 29. If comestibles are packed abroad, instead of the information stipulated in Section 28, point 2, the name, firm, and residence of the exporter and importer may be marked.

Sec. 30. The provisions of Sections 28 and 29 do not apply to liquor, wine and soft drinks.

Information according to section 28 is not required:

1. if the contents weigh less than 100 grams or more than 10 kilograms;
2. if the comestibles are packed at the place of sale or in a special packing room in the same shop;
3. as to bread, sandwiches, fresh fruit, vegetables and other fresh food in solid shape, if the articles are packed in transparent paper or some other transparent material.

Instead of the information required in Section 28, point 2, butter and margarine may be marked with the mark of origin according to instructions of the State Agricultural Agency.

Sec. 31. If saccharine or other artificial sweetening is used in preparing or presenting comestibles, the package shall be marked "includes saccharine" or "includes artificial sweetening." This provision shall not apply to the goods mentioned in Section 30, paragraph 2, point 3, or to bread and other bakery products.

Sec. 32. The packages or labels on packages of food especially adapted for children or persons requiring special food due to illness, weakness or other reasons shall list all the ingredients used in preparing the food.

Sec. 33. Packages, labels, or advertisements of food articles which are not under special stricter control by Swedish government agencies but only under usual control, shall not be marked as being under the control of government agencies.

According to chapter 8 of the present law some special requirements in addition to the general provisions are enforced for the following packaged foods: Milk, cream, butter, cheese, margarine, ice cream, meat, seafood, eggs and powdered eggs, grain, sugar, honey, juices, jams and preserves, fruit, vegetables, mushrooms, and vinegar.

According to section 109, point 9, " * * * any person who sells

⁸⁸ *Ibid.*, B 1217-1239.

packaged food, if the package is not of the prescribed quality or is not marked in the manner prescribed by this law" shall be punished by a fine.

B. EXPORT GOODS

According to the Law on the Prohibition to Import Goods with any False Marking of Origin (*Lag ang. förbud mot införsel till riket varor med oriktig ursprungsbeteckning*) of June 4, 1913,³⁹ it is prohibited to import into Sweden goods the marking of which gives the impression that they are manufactured in Sweden. The imported goods must be marked "imported" or in some other way show that they are not Swedish, and have other information prescribed by law on their labels.

C. DRUGS

Many laws and royal decrees are enforced in regard to drugstores and the sale of drugs therein. The general law in force is the Law on Drugs (*Apoteksvarustadga*) of November 14, 1913.⁴⁰ According to section 10 of this Law:

"Drugs (*apoteksvara*) on sale must be clearly and correctly marked with information concerning the nature of the drug and its composition, on an inscription or declaration attached to the commodity.

Drugs are under the supervision of the Royal Medical Board.

D. MEASURES OF PRIVATE ORGANIZATIONS⁴¹

There is no Government control over the advertising of goods and no special laws are enforced in this field. The Swedish Advertising League (*Svenska Reklamförbundet*) is a private organization generally recognized by businessmen. This organization has established general advertising principles, keeping in mind the interests of businessmen as well as of consumers. The organization has successfully fought against the misuse of advertising. Advertising of goods in Sweden has developed "informational advertising" through which consumers receive reliable information on goods, their qualities, prices, etc.

As mentioned above, no legal provisions were found on packaging and labeling except for food and drugs. Various governmental committees, as well as organizations of businessmen and consumers, consider it extremely desirable for other commodities to have on their labels and packages all the information necessary for customers. The commodities should be furnished with trademarks, the name of producer and dealer, and a special declaration about the quality, etc. On the other hand it is considered impractical to enact special laws or royal decrees in this field, and that it is preferable to have such measures taken voluntarily in order to satisfy the interests of both merchant and consumer.

A special agency (*Varudeklarationsnämnd*) was established in 1951 by central organizations of merchants and consumers consisting of

³⁹ Ibid., p. B 180-183.

⁴⁰ *Svensk Författningssamling* (Swedish Official Gazette), 1913, Law No. 308.

⁴¹ *Kvalitetsforskning och Konsumentupplysning* (Exploration of Quality and Information for Consumers). Ch. 3. *Statens Offentliga Undredningar* (Government Investigations) No. 18, Handelsdepartementet, Stockholm, 1949: 70-128. *Pris och prestation i handeln* (Price and Performance in Trade), ch. 3, SUO 1955: 68-79.

members appointed by these organizations, under the chairmanship of a person appointed by the King. The task of this agency is to see that other commodities besides food and drugs are voluntarily furnished with all requisite information on their labels, packages, or containers.

F. SWITZERLAND

Scattered provisions in a number of Swiss federal statutes safeguard the consumer's interests from being adversely affected by deceptive, misleading, fraudulent, and unfair trade practices in packaging and labeling, as well as in branding and advertising goods and services to consumers. The bulk of the legislation concerning packaging, containers, branding, and labeling forms a part of the laws and regulations pertaining to the marketing of foodstuffs, drugs, and other commodities.

The basic legislative act is the Federal Law Concerning the Trade in Foodstuffs and Articles for Everyday Use of December 8, 1905, as amended.⁴² Its provisions are further implemented by the Regulation on the Trade in Foodstuffs and Articles for Everyday Use of May 26, 1936, as amended,⁴³ containing, in addition to general provisions (secs. 1-38), also detailed regulations concerning a large number of individual foodstuffs and other commodities (secs. 39-486).

The law of December 8, 1905, provides for the means of supervising the trade in all foodstuffs as well as in articles for daily use and consumption "to the extent that they may endanger life or health."⁴⁴

Although the main purpose of the Foodstuffs Law of 1905 is the protection of public health, it is also directed against deceptive practices in the trade in the above-mentioned articles. This follows from paragraphs 1, 2, and 5 of section 54 of the law which have the following wording:

Sec. 54. (1) The Federal Council shall issue the necessary regulations for the protection of health and the prevention of deception in the trade in merchandise and objects which are subject to the provisions of the present Law.

(2) It shall decree the marking of the foodstuffs in such a manner as to make impossible deception concerning their nature and their origin.

(5) It may prohibit the manufacturing and the sale of natural foodstuffs mixed with food substitutes, by means of which a deception of the buyer takes place, insofar as such deception cannot be prevented by any other method.

The Regulation on the Trade in Foodstuffs and Articles of Everyday Use of May 26, 1936, includes several general provisions directed against deceptive trade practices. These provisions are broad enough to cover also deceptive packaging and labeling. The basic requirement for the marking of foodstuffs is stated in section 13, paragraph 1, of this regulation which reads: "Foodstuffs must be marked according to their generic character or their raw products (generic marking)." As a general rule this generic marking has to appear in clearly dis-

⁴² *Bundesgesetz betreffend den Verkehr mit Lebensmitteln und Gebrauchsgegenständen vom 8. Dezember 1905—Bereinigte Sammlung der Bundesgesetze und Verordnungen 1848-1947*, vol. 4 (Bern, 1950), pp. 459-468. Quoted hereafter *Lebensmittelgesetz*.

⁴³ *Verordnung über den Verkehr mit Lebensmitteln und Gebrauchsgegenständen vom 26. Mai 1936—ibidem*, vol. 4, pp. 469-607.

⁴⁴ Section 1 of the *Lebensmittelgesetz*.

cernible and legible letters on merchandise samples, as well as on ready packagings (wrappings, containers, etc.) destined for the retail trade.⁴⁵

Where fancy advertising names are used together with the generic marking on packages destined for the retail trade the inscriptions must be of such a nature that the generic marking appears simultaneously on the packaging along with the fancy name and in a clearly visible and legible form.⁴⁶

According to section 320(3) of the *Lebensmittelverordnung* the provision of section 13, paragraph 3, does not apply to fancy packagings and confectionery boxes. But another special provision (sec. 320(4)), which regulates the trade in chocolate bars, was included in the regulation with the express purpose of protecting the buyer from deception. This provision reads:

Chocolate bars or blocks with a net weight of over 40 grams, if offered for sale separately or in several combined pieces, may be sold or offered for sale only in bars or blocks with the net weight of 50, 100, 125, 150, 200, 250, and 300 grams or more. In-between weights are prohibited (as amended according to the Decision of the Federal Council of April 19, 1940).

Furthermore, the regulation provides in its section 320(6) that the weight indication must appear on the package in figures at least 0.5 cm. high.

In a Swiss Federal Court case⁴⁷ the provision of section 320(4) was challenged by the owner of a Swiss chocolate factory, which had been fined for a violation of this provision. The factory had manufactured and offered for sale packages consisting of two chocolate bars weighing 37 and 40 grams respectively. The following inscription appeared on the wrapping of these packages: "Two bars at 37-40 g=77 g 50 cts including paper filler (100 g=65 cts)." The court of first instance acquitted the owner and held that the Federal Council had no jurisdiction to enact the provision of section 320(4) because its purpose was not an economic police measure but rather a measure of economic policy.

The Federal Supreme Court reversed the decision of the lower instance and ordered the lower instance to impose a fine on the owner. It held that the provision was legally passed in the exercise of the police power, because its purpose was to protect the buyer from deception. Weight differences of 25 or 50 grams, said the court, are easier to discern from the size of the bar or block of chocolate than are smaller differences. A dealer is not prohibited to sell together two pieces of chocolate weighing 37 and 40 grams respectively for 50 [Swiss] cents; however, he may not offer them combined in one package which could create the impression in the buyer that he is buying a single bar of the usual size of a bar of 100 grams. A buyer is deceived at the moment when he considers one bar to be of the same size or weight as another, although one weighs several grams less than the other.

⁴⁵ Sec. 13, par. 2 of the *Lebensmittelverordnung*.

⁴⁶ Sec. 13, par. 3, op. cit.

⁴⁷ Decision of the Appeals Division of Cassation of the Federal Supreme Court of Apr. 7, 1949, *Health Agency Meilen v. Ellenberger—Entscheidungen des Schweizerischen Bundesgerichtes*, vol. 75, pt. 4, 1949, pp. 76-82.

Misleading information on the nature, origin, amount, or weight of packaged goods is expressly prohibited by section 15, paragraph 1, of the Regulations which reads:

Markings, data, illustrations, packagings, and inscriptions on packagings as well as types of display used for foodstuffs must not lend themselves to deception concerning the nature, origin, amount, weight, etc. of the respective foodstuffs.

PENAL PROVISIONS

The original version of the Foodstuffs Law of December 8, 1905, provided in its sections 36 and 37 for penalties for the falsification of foodstuffs and the marketing of falsified foodstuffs. These two sections were later repealed and at the present time section 153 (Falsification of Merchandise) and section 154 (Marketing of Falsified Merchandise) are applicable to any merchandise, including foodstuffs.⁴⁸ The penalties range from a fine to imprisonment in the case of an intentional offense. The negligent marketing of falsified merchandise is punished only by a fine, but if such marketing or falsification is done as a trade, the penalty may not be less than 1 month's imprisonment coupled with a fine.

The intentional violation of regulations implementing the Foodstuff Law of 1905 imposes a penalty of custody for not more than 3 months or a fine of up to 1,000 Swiss francs; unintentionally committed offenses are punished only by a fine.⁴⁹

Prior to the adoption of the Swiss Federal Criminal Code of 1937 (effective January 1, 1942), a number of criminal codes of the individual cantons included sections penalizing the use of deceptive markings on merchandise or the deceptive packaging of merchandise. This offense was considered a minor one and entailed punishment by a fine. An example of these provisions is section 232(4) of the Criminal Code of Bern, which reads as follows:

SECTION 232(4) OF THE CRIMINAL CODE, CANTON OF BERN⁵⁰

Whoever, for the purpose of deception in the trade or in commerce falsely or equivocally indicates the nature of a foodstuff on a label or inscription, or in a public notice, or by the type of packaging or in any other manner, shall be punished by a fine of from 5 to 500 francs.

A special case of deception in the trade-in products is the forging or counterfeiting of a trademark. The Swiss Trademark Protection Law provides that the deceived buyer or the owner of the mark (sec. 27(1)) may sue in civil or criminal court "anyone who counterfeits or imitates

⁴⁸ Dr. Karl Dürr. *Kommentar zum eidgenössischen Lebensmittelgesetz nebst Verordnungen*. Bern, Aretusa-Verlag, 1953, p. 22.

⁴⁹ Sec. 41 of the *Lebensmittelgesetz* reads as follows:

"(1) Whoever contravenes the regulations issued in implementation of Sec. 54 shall, unless the provisions of Secs. 36, 37, and 38 are applicable against him, be punished by custody for not more than three months or by a fine of up to 1,000 francs.

"(2) If the contravention is committed by negligence he shall be punished by a fine of up to 500 francs."

Secs. 36 and 37 have been repealed. Sec. 38 punishes the manufacturing, offering for sale, or marketing of articles for consumption or daily use, the consumption or use of which endangers health or life, by imprisonment for not more than 2 years and a fine of up to 3,000 francs if the offense is committed intentionally; these offenses committed by negligence entail imprisonment for not more than 6 months and a fine or only imprisonment.

⁵⁰ *Strafgesetzbuch für den Kanton Bern vom 30. Januar 1866*. Commented 2d edition by Carl Stooss. Bern, 1896, p. 94. Similar provisions were known to the cantonal legislation of Appenzell, Basel-Stadt, Zürich, and Thurgau. See Esser, Gottfried. *Die Vergehen des eidg. Lebensmittelgesetzes vom 8. Dezember 1905* (Diss.). Zürich, Muri, Steinmann, 1927, pp. 9-10; Capaul, Duri. *Strafrechtliche Fragen zur Weinfälschung* (Diss.). Freiburg, Stampa Romontscha, 1950, pp. 83-84.

the trademark of another in such a manner that the public is misled" (sec. 24(2)).⁵¹ The punishment inflicted upon the offender is a fine of from 30 to 2,000 francs or imprisonment for from 3 days to 1 year or both. In case of recidivism these penalties may be doubled. Proof of negligence exculpates the offender (sec. 25).

Another provision of Swiss law which could apply to deceptive information on labels or packages is section 2(b) of the Federal Law against Unfair Competition of September 30, 1943, which states that a violation of the principles of good faith may be committed by "making incorrect or misleading statements concerning oneself, one's own products, performances or business circumstances." The Swiss Federal Supreme Court has held that this applies also to misleading information on the packaging of merchandise.⁵² An offender may be prosecuted on request of persons or associations entitled to file a civil suit against him, and the punishment is a fine or imprisonment.⁵³

THE GERMAN FEDERAL REPUBLIC

Safeguarding the consumer's interests adversely affected by deceptive, misleading, fraudulent, and unfair trade practices in packaging and labeling, as well as in branding and advertising goods and services to consumers, has been effected in the German Federal Republic by provisions in several statutes, some of which date back to the time prior to World War II.

Generally speaking, there are no special statutes directed against unfair labeling and packaging practices as such. However, regulations pertaining to the marketing of specific commodities contain provisions concerning misleading, deceptive, and fraudulent, as well as unfair, trade practices. This is especially true with respect to the marketing of foodstuffs. General provisions prohibiting deceptive, fraudulent, misleading, and unfair trade practices in the trade in foodstuffs and consumer commodities are contained in the Foodstuffs Act of 1936, as amended.⁵⁴ The pertinent provision directed against fraudulent trade practices, and prohibiting falsification and adulteration, as well as misleading and deceptive marking, reads as follows:

Section 4. It shall be prohibited—

1. to falsify or adulterate foodstuffs for the purpose of deception in trade and commerce;
2. without sufficient identification to tender, offer for sale, to sell or otherwise place on to the market spoiled, falsified or adulterated foodstuffs; even in case of such identification this prohibition shall apply to the extent in-

⁵¹ *Bundesgesetz betreffend den Schutz der Fabrik- und Handelsmarken, der Herkunftsbezeichnungen von Waren und der gewerblichen Auszeichnungen vom 26. September 1890—Bereinigte Sammlung*, vol. 2. Bern, 1949, pp. 845–856; David Heinrich, *Kommentar zum schweizerischen Markenschutzgesetz*. Basel, Helbing & Lichtenhahn, 1940, pp. 251–260. See also Giezendanner, P. *Streifzug durch das Reklamerecht*. Zürich, 1953, pp. 51–52. *ment or a fine.*

⁵² Decision of Oct. 19, 1912. *Riegler v. Zuban, Entscheidungen des Schweizerischen Bundesgerichtes*, vol. 38, pt. 2, pp. 566–572. This decision was quoted in a recent Swiss commented edition of the Unfair Competition Law—Büren, Bruno von. *Kommentar zum Bundesgesetz über den unlauteren Wettbewerb vom 30. September 1943*. Zürich Schulthess, 1957, p. 75.

⁵³ Sec. 13 of the Law on Unfair Competition.

⁵⁴ *Gesetz über den Verkehr mit Lebensmitteln und Bedarfsgegenständen (Lebensmittelgesetz)* [Law Concerning the Trade in Foodstuffs and Consumer Commodities (Foodstuffs Act)] of Jan. 17, 1936 (*Reichsgesetzblatt*, 1936, I, p. 17), as amended Aug. 14, 1943 (*ibidem*, 1943, I, p. 488) and Dec. 21, 1958 (*Bundesgesetzblatt*, 1958, I, p. 950).

herent in the established regulations adopted pursuant to Sect. 5 No. 5 [of this Law];

3. to tender, keep in stock for sale, offer for sale, to sell, or otherwise place on the market foodstuffs with a misleading marking [*Bezeichnung*], designation [*Angabe*] or packaging [*Aufmachung*]. This shall apply also [to cases] where the misleading identification, designation or packaging refers to the origin [*Herkunft*] of the foodstuffs, the time of their manufacture [*Herstellung*], their quantity, their weight or other circumstances which are contributing factors to their evaluation.⁵⁵

Section 5 of the same law authorized the Minister of the Interior to issue jointly with the Minister for Food and Agriculture implementing regulations concerning specific kinds of food products and commodities. Numerous regulations were issued in the years following.⁵⁶

Sections 11 and 12 of the Foodstuffs Act of 1936 provide for penalties ranging from a fine to imprisonment and in serious cases even to confinement in a penitentiary up to 10 years. The federal ministers concerned⁵⁷ shall establish which markings, designations, or packagings, being misleading, shall come within the purview of the prohibitions specified in section 4(3) of the Foodstuffs Act of 1936.⁵⁸ The Ordinance Concerning the Exterior Marking of Foodstuffs of May 8, 1935, as amended,⁵⁹ makes it mandatory for the manufacturer or the person importing certain food products from abroad (*Zoll-Ausland*) to place external markings on the packages and containers intended to be offered for sale, sold, or otherwise placed on the market.⁶⁰ Whoever wishes to place on the market a foodstuff under his name or the name of his firm, has the duty to supply the markings, and the manufacturer as well as the importer have no duty to do so. The ordinance enumerates the food products which are subject to the mandatory requirement of external marking (*Kennzeichnungspflicht*) to the extent they are delivered to the consumer in packages or containers (sec. 1). It furthermore provides that certain data⁶¹ must appear on the packages or containers at a conspicuous place, in German and in clearly discernible and easily legible writing.⁶² These provisions are enforced also with respect to food products imported from abroad.⁶³ The Ordinance Concerning Price Marking of November 16, 1940, as amended April 6, 1944, is also pertinent to this study. In the German Federal Republic the interests of the consumer are safeguarded also by means of imposing upon retailers the duty to provide price markings on the articles for sale. A translation of the pertinent provisions of the Ordinance Concerning Price Marking of November 16, 1940, as amended April 6, 1944,⁶⁴ follows:

⁵⁵ Translated from the most recent compilation of the food laws of the German Federal Republic: *Lebensmittelrecht. Bundesgesetze und -verordnungen über Nahrungs- und Genussmittel*. 3d ed. München und Berlin, Beck, 1961. 566 pp., at pp. 1-24. (Quoted hereafter: *Lebensmittelrecht*. 1961.)

⁵⁶ For a list of these regulations see Ettmeyer, Werner. *Juristischer Wegweiser für Wettbewerb und Werbung*. Nürnberg, K. Böhrer, 1952, p. 91; the most up-to-date collection of the texts of the regulations appears in *Lebensmittelrecht*, 1961, pp. 71-453.

⁵⁷ At the present time this authority is exercised by the Federal Minister of the Interior jointly with the Federal Minister for Food, Agriculture and Forests—*Lebensmittelrecht*, 1961. P. 6, note 2.

⁵⁸ Sec. 5(5) of the Foodstuffs Act of 1936.

⁵⁹ *Verordnung über die äussere Kennzeichnung von Lebensmitteln (Lebensmittel-Kennzeichnungsverordnung)* vom 8. Mai 1935, as amended Apr. 16 and December 1937, Mar. 16, 1940, and December 19, 1959—*Lebensmittelrecht*, 1961, pp. 64-68.

⁶⁰ *Lebensmittel-Kennzeichnungsverordnung*, sec. 1 (2) and (3).

⁶¹ The name of the firm and the seat of the main industrial establishment of the manufacturer; an indication of the contents according to commercial custom as well as according to German weights or measures at the time of the packaging, or by the piece.

⁶² Sec. 2 (1) or the Ordinance of May 8, 1935.

⁶³ Sec. 4, *ibidem*.

⁶⁴ *Verordnung über Preisauszeichnung* vom 16. November 1940 in der Fassung vom 6. April 1944—*Reichsgesetzblatt*, 1944, I, pp. 97-100.

SECTION 1

(1) Whoever, as a retailer, or in some other manner, sells goods in the retail trade, shall have the duty to provide these goods with the required price markings. The marking has to designate the kind and quality [*Gütebezeichnung*] customary in the trade, as well as the standard sales unit [*Verkaufseinheit*] customary in the trade.

(2) The provision of Par. 1 applies respectively to all goods which are offered [for sale] by retailers or in some other manner in the retail trade according to pattern books [*Musterbücher*].

SECTION 10

(1) Price markings must be clearly legible;

(2) Price labels (*Preisschilder*) may be written upon only one side, or bear the same text on both sides.

* * * * *

The Federal Minister of the Economy of the German Federal Republic has in a recent letter (*Schreiben*) of March 22, 1961,⁶⁵ referred to section 1 of the Price Marking Ordinance and has ruled that in all cases of the sale of packages with a filling weight that is not even (*ungerades Füllgewicht*), e.g., 315, 430, 460, etc., grams, the markings on the package must include also the price for the weight unit customary in the trade. For items sold by weight, as a rule one-half kilogram or 500 grams shall be the basic weight unit customary in the trade. Consequently, markings of 100 grams, 125 grams, or 250 grams shall be considered units customary in trade. However, this general rule applies only to articles for daily use. In the case of branded goods—mainly delicatessen or cosmetic articles—under certain circumstances the uneven weight (*Krummes Gewicht*) would be also considered customary in the trade. Furthermore, it was ruled that all weight markings shall refer to net, rather than gross, weight because in the opposite case the consumer would be at a disadvantage. But in the case where the weight of the packing material is substantial with respect to the weight and the price of the merchandise, a double marking indicating the net and gross weight shall be required.⁶⁶

H. THE SOVIET UNION

The Soviet Union enacted several decrees dealing with the labeling of goods for the purpose of safeguarding the consumer's interests. In general, all enterprises producing spices or goods for mass consumption must obtain in advance the approval for their labels, naming of goods, etc., from the proper authorities.

The new Criminal Code of October 27, 1960, in force since January 1, 1961, provides severe penalties for the deception of customers.

The translation of the pertinent decrees and provisions follows.

TRANSLATION FROM RUSSIAN

APPROVAL OF LABELS ON GOODS

Decree No. 1233 of the People's Commissar of Internal Commerce of November 16, 1935

The Government Commerce Inspectorate attached to the People's Commissariat of Internal Commerce of the U.S.S.R. has found cases in which industrial enterprises, when putting their products on the market for consumers at large, have put on their goods labels of other enterprises or labels which are, in ap-

⁶⁵ Published in the official gazette of the Ministry of the Economy of the Land Baden-Württemberg—*Amtsblatt des Wirtschaftsministeriums Baden-Württemberg*, 1961, pp. 23 ff.—I B 8 1048/61. This information has been obtained from *Rechtsarchiv der Wirtschaft. Steuer- und Rechtsfragen in Kurzberichten*. Richard Boorberg Verlag, Stuttgart-München-Hannover, vol. 14, issue No. 11 (June 10, 1961), item 267, pp. 353-354.

⁶⁶ *Ibidem*, p. 354.

pearance, identical with or similar to labels of other enterprises, or have included false information in the inscriptions on their labels.

For instance, in the Western Province, the *artel* of Roslav, of the Food Industry Union "Ob'edinennoi konditer," purchased a large number of labels of other enterprises (Mossel'prom, Lensel'prom, etc.) in the city of Gomel and used them as wrappers for their own candy products; and a Moscow *artel* used labels with the inscription "Export Vinegar" on their vinegar bottles, although their product was not of this kind. Pointing out that the above-mentioned and similar cases which deceive the consumer are intolerable under the conditions of Soviet trade and should be stopped immediately, the People's Commissar of Internal Commerce of the U.S.S.R. establishes the following:

1. All enterprises are absolutely prohibited to market goods packaged with labels which could deceive the consumer either in regard to the producer or quality of the goods by using labels of other enterprises or labels identical or similar to those of other enterprises, or by including on the labels false information regarding the quality, origin or purpose of the goods.

2. It is the duty of all enterprises which put out goods with labels, to obtain in advance approval of such labels from the higher organization under which they operate.

3. In cases in which the labels used by enterprises either belong to other enterprises or, in appearance, are identical or similar to the labels of other enterprises, or contain information which could deceive the consumer, the local organs of the Inspectorate of Government Commerce attached to the People's Commissariat for Internal Commerce of the U.S.S.R. shall initiate action for the prosecution of delinquents using such labels. [*Organizatsiia i pravila roznichnoi trgovli* (Organization and Rules of the Retail Trade) comp. by K. Grichik, K. Grave and V. Pirkovski, Moscow, 1936, p. 241.]

PROCEDURES TO ESTABLISH THE NAMES OF SPICES AND GOODS OF MASS CONSUMPTION

Decree No. 1403 of the People's Commissar of Internal Commerce of the U.S.S.R.
of December 16, 1935

In order to establish uniform procedures for the naming of spices and goods of mass consumption and to establish control so that the names will correspond with the purpose and requirements of the cultural Soviet trade, the People's Commissar of Internal Commerce of the U.S.S.R. has established:

1. All enterprises producing spices or goods of mass consumption shall, when they put out new goods or change the names of existing goods, obtain the approval of the proper people's commissariat or of the chairman of the provincial (land) cooperative center before forwarding the new goods or renamed goods for sale.

Note 1. The proceedings for submitting new names for approval shall be established by the proper commissariat or by the center of cooperatives.

Note 2. Putting spices and goods of mass consumption with new names on price lists, prospectuses, announcements, etc. as well as forwarding them for sale before the names have been approved in the above-established way shall be prohibited.

2. In examining the proposed new names of goods for approval, the following shall be taken into consideration:

- (a) the name shall correspond to the contents of the goods as much as possible;

- (b) the name, in its literal sense, shall not be out of keeping with this period of time (for example, goods should not be given the names of people who are enemies of labor or names which recall the former owners of the enterprise, etc.);

- (c) the name shall not deceive customers as to the quality, period of time of usage, purpose, etc., of the goods.

3. In all cases in which the names of goods fail to conform to the provisions of Section 2 of the present Decree, the local organ of the People's Commissariat of Internal Commerce shall immediately inform the People's Commissariat of Internal Commerce of the U.S.S.R. (Division of Rules and Norms of Trade) so that these names may be re-examined.

[Ibid. p. 241-242.]

PROHIBITION TO GIVE THE DESIGNATION TEA TO VARIOUS BEVERAGE SUBSTITUTES

Decree No. 122 of the People's Commissar of Internal Commerce of February 25, 1935

Due to the fact that various beverage substitutes (having the flavor of red bilberries, raspberries, fruits, etc.) have been put on the market bearing on their wrappings or labels the words "tea" or "used as tea," etc., the word "tea" being in heavy type, the People's Commissar of Internal Commerce of the U.S.S.R., has established:

1. It shall be prohibited to sell tea substitutes with labels bearing the words "tea" or "used as tea," and in general inscriptions which are intended to conceal the contents of the substitute beverage.

The use of the name "tea beverage" for the substitute if the word tea is not in heavy type shall be permitted.

2. All commercial enterprises and organizations shall, within two months from the publication of the present Decree, be obliged to take off the market all substitutes with deceiving wrappings or to change erroneous inscriptions, and put on a new one which indicates that the beverage is a substitute.

3. Two months after the publication of the present Decree, the Government Commerce Inspectorate at the Commissariat of Internal Commerce of the U.S.S.R. shall immediately inform the prosecution bureau of all cases in which tea substitutes have been put on the market in packages which deceive customers.

[Ibid., p. 242.]

STATUTE ON TRADE-MARKS AND TRADE-SIGNS OF MARCH 7, 1936

EXCERPTS

In order to increase the responsibility of industrial enterprises for the quality of the products they release and to facilitate the customers' selection of the products of enterprises with established reputations, the Central Executive Committee and the Council of People's Commissars have resolved:

1. All enterprises of governmental industries, producers' *artels* (co-operative associations) and cooperatives of invalids, as well as enterprises of public organizations, shall attach to their products trade-marks which indicate:

- (a) the full or abbreviated name of the enterprise;
- (b) its location;
- (c) the full or abbreviated name of the people's commissariat, central bureau, or co-operative center under which the enterprise operates;
- (d) the grade of goods and the number of the standard.

Note. A list of enterprises and goods which do not require trade-marks shall be issued by the Council of Labor and Defence.

2. The trade-mark may be affixed on the goods themselves, or its wrapping or attached to the label on the goods.

3. Release of goods without trade-marks makes the director of the industrial enterprise liable to prosecution in a disciplinary or judicial procedure.

4. Enterprises, in order to make their produce[d goods] distinctive have the right to provide, in addition to the mandatory affixture of the trade-mark, a permanent original distinctive sign (trade signs) such as: a graphic design, an original name, a particular combination of numbers or words, original packaging, etc.

Individual large enterprises may be granted the right by the people's commissariat under which they operate to affix on products a trade-sign instead of a trade-mark consisting in its original design of only the name or initial (monogram) of the enterprise, the kind of goods and the number of the standard.

A list of goods which shall be provided with trade-signs shall be established by the People's Commissar of Internal Commerce for products of mass consumption designated for the internal market and by the People's Commissar of Heavy Industry for machines and equipment.

5. The registration and usage as trade-signs of the following shall be prohibited:

- (a) signs which are insufficiently distinct from the signs of the other enterprises registered with the U.S.S.R.;
- (b) signs which contain certain false or deceiving information;
- (c) signs which contain a red cross or a red half moon.

* * * * *

10. Trade-marks for all kinds of goods shall be registered with the U.S.S.R. Ministry of Commerce (as amended on March 4, 1940).

(*Sobranie Zakonov i Rasporiazhenii*, 1936, No. 13, item 113.)

ARTICLE 156. DECEPTION OF CUSTOMERS

Fraud in measures, weights, increase of established prices in the retail trade, fraud in counting or any other deception of customers in stores or other commercial enterprises or enterprises of public refreshment shall be punished by confinement for up to two years, or by correctional labor for up to one year, or by deprivation of the right to be an employee in commercial enterprises or public refreshment enterprises.

The same acts committed on a large scale or by persons who have been previously sentenced for the same crime shall be punished by confinement for from two to seven years with or without confiscation of property, or with deprivation of the right to be an employee in commercial enterprises or public refreshment enterprises.

(*Ugolovnyi Kodeks RSFSR* (Criminal Code of the RSFSR). Moscow, 1960, p. 78.)

I. AUSTRIA

A survey of Austrian legislation did not disclose any specific statutes aimed at unfair labeling and packaging practices. In extreme cases, of course, the provisions governing fraud as contained in the Austrian Criminal Code⁶⁷ would be applicable. On the other hand, a number of provisions are scattered throughout various laws and decrees, which may be used, under certain conditions, to combat misleading, deceptive, and fraudulent trade practices in the marketing of food products and the sale of goods.

For many decades the basic legislation and most of the decrees issued thereunder were enacted on the basis of a law which was passed over 60 years ago primarily in the interest of the protection of the population's health and to introduce provisions making misleading, deceptive, and fraudulent trade practices punishable as petty offenses or minor crimes depending on their gravity. This basic law is the Law on Foodstuffs (*Lebensmittelgesetz*) of January 16, 1896 (*Reichsgesetzblatt* (Collection of Laws), hereafter abbreviated RGB1, No. 89 of 1897). Through the question of amendments was brought up on several occasions, no changes occurred during the following decades until 1938 when the Austrian Republic, established in 1918, ceased to exist. During the Nazi regime, German laws replaced the Austrian legislation previously in force on the subject. After the collapse of the Nazi Reich, the text of the law of 1896 was published anew, with some modifications, by the Proclamation of the Federal Government of October 2, 1951,⁶⁸ as the Law on Foodstuffs (*Lebensmittelgesetz*). Amended slightly in 1960 by the Federal law of November 28, 1960,

⁶⁷ *Das österreichische Strafgesetzbuch* (1945) * * * herausgegeben von Gustav Kaniak. 5th ed., Vienna, Manz, 1960. Secs. 197 et seq.

⁶⁸ *Bundesgesetzblatt* (hereafter abbreviated BGB1), 1951, No. 239, pp. 913 et seq.

No. 245,⁶⁹ this law is concerned not only with the trade in foodstuffs but also, among other things, with the trade in cosmetics, toys, tapestries, clothing, implements for cooking or storing foodstuffs or using the same, as well as scales, measures, and other instruments employed in the measurement of foodstuffs. Section 6 of the law authorizes the ministries concerned to issue regulations in the interest of health protection while section 7 is designed to protect the consumer from monetary loss and misleading trade practices.⁷⁰

Under these sections the ministries concerned may prohibit or restrict the following activities engaged in as a trade: The manufacture, sale, or offer for sale of objects which are designed for the imitation or adulteration of foodstuffs as well as the sale as a trade and the offering for sale of foodstuffs under a marking not corresponding to their true quality.

Pursuant to this law (primarily based on sec. 7) a number of decrees were issued for the purpose of protecting the consumer from deceptive practices. In almost all instances the common feature was to make certain that a product whose ingredients were known to the public came into the trade and was offered for sale under the known name of the product only when it contained all the ingredients normally expected in the product. Any substitutions or mixtures used in the preparation of the product had to be disclosed.

Such decrees were, for instance, the decree of September 5, 1899 (RGB1 No. 182), concerning malt wines (*Maltone*) issued by the Ministers of the Interior, Justice, Commerce, and Agriculture.

The decree of April 2, 1900 (RGB1 1900, No. 69, p. 106), made unlawful the sale and offering for sale, both as a trade, of beverages similar to beer in the production of which hops or hop extracts were used under any name than the one which distinctly showed the use of these ingredients.

A similar decree of April 12, 1906 (RGB1 No. 83, p. 714), issued by the Ministers of the Interior, Justice, Finance, Commerce, and Agriculture, dealt with the trade in sugar and stipulated that whenever mixtures of sirup derived from sugarbeets or starch were used, these products could be sold only under this express marking.

The decree of January 30, 1908 (RGB1 No. 28, p. 44), issued by the Ministers of the Interior, Agriculture, Commerce, and Justice, protected the designation of pure cooking oil (such as olive oil).

Another decree intended for the protection of the consumer against fraud was the decree of December 16, 1922 (RGB1 1922, No. 925, p. 1946), issued by the Federal Minister for Social Administration in consultation with the other Ministers concerned prohibiting the manufacture, trade, and offering for sale as a business of substances designed for the adulteration of foodstuffs.

Furthermore, under the new section 7a the Ministry of Social Welfare may, in consultation with the other Ministries concerned, after certain institutions based on public law have been heard, issue regulations setting forth certain conditions which for reasons of public health must be met when selling or offering for sale, producing, manu-

⁶⁹ BGB1 1960, p. 2177.

⁷⁰ See H. Frenzel, *Das novellierte österreichische Lebensmittelgesetz 1950*. Vienna, Osterr. Staatsdruckerei, 1951.

facturing, processing, marking, packaging, storing, and shipping foodstuffs designated for the trade and commodities subject to the present law.

Sections 9 to 22 deal with violations of the law. Fines of up to 150,000 Austrian schillings⁷¹ or imprisonment, or both, are provided as penalties. In the most serious cases referred to in section 19 even confinement in a penitentiary for up to 5 years may be imposed. However, it should be stressed again that the primary purpose of this law is the protection of the population's health and that noncompliance with the provisions of sections 7 and 7a referred to above constitutes merely a petty offense punishable by imprisonment for up to 1 month or a fine of up to 3,000 schillings, or both. Minor violations of the provisions of the law are now removed from the jurisdiction of the courts and are assigned to the jurisdiction of the local administrative authorities (sec. 22).

The Law of September 26, 1923, BGB1 No. 531, against Unfair Competition⁷² in the version of Federal laws No. 461 of 1924, No. 192 of 1926, No. 111 of 1936, No. 145 of 1947, and No. 160 of 1952, also contains provisions pertaining to the protection of consumers against deceptive practices.

Section 32 is of special interest in that respect. It reads as follows:

Sec. 32 (1) It may be ordered by decree that certain commodities can only be sold in the trade, offered for sale, or otherwise placed on the market in prescribed quantity units or with visible marking [*Ersichtlichmachung*] of the quantity (weight, measure, number), quantity or geographic origin.

(2) These decrees shall prescribe the manner of affixing as well as the text of the prescribed designation and may also contain regulations as to the date of the affixing and the packaging as well as provisions permitting the deviation or exemption from these provisions [in cases] when the quality of the commodities or special conditions so require [such deviations or exemptions]; finally these provisions may also contain the measures necessary for their inspection and enforcement.

Whenever the affixing of the designation of the quality on the commodity itself or on its packaging or wrappings is not feasible, it may be decreed that the quality must be indicated in a document accompanying the delivery of the commodity. For the trade in articles of consumption connected with agriculture and forestry it may be prescribed that the name or firm and the place of business of the manufacturer of the commodity must be stated.

(3) Whenever decrees concerning the use of prescribed quantity units or the visible marking of the quantity are issued with regard to such commodities which, as a rule, due to their natural qualities, suffer losses as to weight or measure, then the limits of deficiencies which may be allowed shall be especially established.

(4) Furthermore, certain designations may be prescribed, admitted or prohibited by decree in regard to commodities which may as a trade be sold, offered for sale or otherwise placed on the market [only] with the visible marking of the quantity, quality or place of origin.

The provisions of Subsections 2 and 3 shall, to the extent that they are applicable, also apply to decrees which prescribe a certain designation [or] admit or prohibit the same.

Section 33 in particular provides for penalties incurred for the violations of decrees enacted pursuant to the foregoing section. Fines of up to 500 Austrian schillings and imprisonment for up to 3 months

⁷¹ Increased to this amount by an amendment introduced by the Federal law of July 16, 1952 (BGB1 No. 160, pp. 476-477).

⁷² *Wettbewerbsrecht* herausgegeben von Fritz Schönherr, E. Saxl und Karl Wahle. Vienna, Manz, 1959.

may be imposed. In addition, any designation not included in violation of that section must be added, or misleading designations eliminated; if this is not feasible, confiscation of the commodities may be pronounced. Even if the prosecution or sentencing of definite persons is impossible, confiscation of the commodities involved may be pronounced independently.

Pursuant to the Law against Unfair Competition, particularly as based on section 32 of that law, a number of implementation decrees were issued. The Decree Concerning Bottles of July 11, 1953,⁷³ issued by the Federal Ministry for Commerce and Reconstruction, is of special interest for the protection of the consumer from deceptive practices. This decree, referring to sections 19 and 24 to 26 of the Federal Law of July 5, 1950, on Gauging,⁷⁴ prescribes that bottles designed to be filled with liquid foodstuffs may be used only when they meet certain designated standards of measurements as to their rated contents [*Flaschennenninhalt*]. As a rule, liquid foodstuffs may be bottled only in bottles having the following measurements: 2 litres, 1.5 litres, 1 litre, 0.75 litre, 0.7 litre, 0.5 litre, 0.35 litre, 0.25 litre, 0.2 litre, 0.175 litre, 0.125 litre, 0.1 litre. There are a few exceptions admitted, for instance beer may also be bottled in bottles with a rated volume of 0.33 litre.

Detailed regulations pertain to the proper filling of the bottles. Bottles and bottle-like containers subject to the provisions of this decree must be made of glass, porcelain, stoneware, or other material capable of holding its shape. The contents must be expressed in litres. The designation of the rated contents and the sign of the manufacturer, as required by the Law on Gauging, must be placed on the outside of the bottom or the body of the bottle in a distinct and unseverable manner.

A decree of the Federal Ministry for Agriculture and Forestry of November 18, 1954,⁷⁵ is designed to combat unfair trade practices in trading in honey and artificial honey.

A decree of January 25, 1955,⁷⁶ based on section 32 of the Law on Unfair Competition, was issued by the Federal Ministry for Commerce and Reconstruction for the protection of the consumer buying soap for household use. The decree reads as follows:

Par. 1. Curd soap [*Kernseife*] within the meaning of this Decree shall be understood to be a household soap only, which, in solid form, contains at least 62 per cent of soap-making sebacic acids of which not more than one fourth may be resin acid.

Par. 2. Curd soap may be sold, offered for sale, or otherwise placed on the market as a trade in retail commerce only in bars of 100 grams, 200 grams, 250 grams, 400 grams, 500 grams freshweight [*Frischgewicht*]. Loss of weight of not more than 25 per cent of the total weight, which occurred during storage, shall be disregarded.

Par. 3. The freshweight must be clearly marked in letters of at least 5 mm. in height on the curd soap or its packaging if it is not transparent. The word "Freshweight" [*Frischgewicht*] shall precede the statement indicating the weight.

Par. 4. The present Decree shall take effect as of July 1, 1955.

⁷³ BGBI 1953, No. 123, p. 532.

⁷⁴ BGBI 1950, No. 152, p. 667.

⁷⁵ BGBI 1954, No. 262, p. 1135.

⁷⁶ BGBI 1955, No. 28, p. 295.

Another regulation safeguarding the consumer's interest against deceptive and unfair practices is the Decree of September 21, 1953,⁷⁷ issued by the Federal Ministry for Commerce and Reconstruction concerning the designation of the place of origin of distilled alcoholic beverages. Under this decree distilled alcoholic beverages, whether sweetened or unsweetened, may be sold in the trade, offered for sale or otherwise placed on the market only in sealed containers, on which the place of origin is designated and the ingredients are stated. The designation [*Bezeichnung*] must be written in German, clearly and inefaceably, and permanently affixed to the side of the container bearing the label. In addition, in the case of containers having a volume capacity of from 35 centilitres to 1 litre, inclusive, the minimum lettering [size] must be 2 millimeters while on containers of a volume capacity of more than 1 litre the lettering must be at least 5 millimeters in height.

The recently enacted Federal Law of July 6, 1961,⁷⁸ governing the Trade in [Grape] Wine and Wine made from other Fruits (referred to as the Law on Wines of 1961) is also designed to protect the public against deceptive, misleading, and unfair trade practices. Section 13 of the law contains provisions pertaining to the designation. It reads as follows:

SECTION 13

General Provisions Pertaining to the Designation:

(1) Wine may not be kept ready for sale, be sold or otherwise placed on the market under a designation or form (such as a pictorial representation, shape of a bottle and others) which may be misleading.

(2) Whenever, under the provisions of the present law, the use of a designation in written form is prescribed, the lettering shall be clearly legible and of appropriate size. It shall be affixed at a place of the container conspicuous to the purchaser.

(3) Insofar as the use of a designation is inadmissible, the following shall also be prohibited:

(a) to affix the designation on the containers, the packaging or wrappers in which the wine is being placed on the market or is to be placed on the market. [Remainder of Section irrelevant.]

The law also contains detailed provisions pertaining to the designation of the geographic regions of the various domestic wines and the designation of origin in the case of imported wines.

Austria is also a party to the International Convention for the Use of Designations of Geographic Provenience [*Appellations d'origine*] and Denominations of Cheeses originally signed at Stresa on June 1, 1951, and the supplementary Protocol signed at the Hague on July 18, 1951. Austria acceded to this Convention in 1953.⁷⁹ Austria also signed agreements with several countries concerning the protection of designations of geographic provenience and the origin of certain products. An agreement of this type was concluded with Italy on February 1, 1952, protecting the use of Vermouth and other Italian wines on the one hand, and, for instance, several well-known Austrian beers on the other hand (*Gösser Beer*, etc.).

⁷⁷ BGBI 1953, No. 152, p. 572.

⁷⁸ BGBI 1961, No. 187, p. 967.

⁷⁹ BGBI 1955, No. 135 of 1955, p. 647, and No. 136 of 1955, p. 662. BGBI 1954, No. 235, p. 1057.

J. BELGIUM

The normal conditions of competition in industry and the trades are well established and protected by law. The producers, merchants, and consumers have a right of action in the courts against any dishonest practices or acts of their competitors and misrepresentation to the consumer. (Decree No. 55 of December 23, 1934, *Moniteur Belge* (hereinafter M. B.) of December 30, 1934). The only enactments found which bear most closely on deceptive labeling or packaging practices are the following:

A decree of March 30, 1936 (M. B., April 7, 1936), empowers the King to issue new regulations for their protection in case of need. Within this scope, the Council of Ministers may:

1. establish the composition and the quality of products permitted on the market under a special trade name;
2. prohibit from the market products bearing a particular trademark;
3. impose restrictions and obligations to the effect that certain products must be sold under a particular name;
4. or, in order to establish a better understanding on the part of the consumers, impose a grouping of trademarks under which a particular product may be permitted on the market; special labeling or signs; special words or phrases.

Certain products of everyday use have to comply with the specific composition as stated in the law, before they can be placed on the market. Other products must be described and identified by special words to prevent a misrepresentation to the public of the product.

Examples:

A. Use of names

A circular letter of September 1, 1952 (M. B. of September 1, 1952), regulates the names of some of these products as stated in the decree of January 13, 1935:

Art. 1. The name "cloth" or "genuine thread" cannot be used except when it is followed by a designation of the raw material used for the fabric.

Art. 2. The words "linen cloth," "genuine thread linen," "fine linen," "batiste" are specially reserved for textile fabrics which are entirely composed of linen.

B. Use of phrases

"Made by hand" in the shoe industry is regulated by the decree of March 6, 1935 (M. B., March 22, 1935); "natural cement," "Roman cement," etc., is regulated by the decree of April 14, 1935 (M. B., March 20, 1935); "wool" by the decree No. 332 of May 7, 1936 (M. B., May 22, 1936); "silk" by the decree of March 22, 1937 (M. B., August 1, 1937); etc.

