

Consumer and Non-Consumer Labeling

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The Office of Weights and Measures recently requested that the Food and Drug Administration (FDA) clarify the regulations for labeling of consumer and non-consumer packages. Consumer packages are packages intended for sale through retail channels, while non-consumer packages are intended for institutional use and are sold in the wholesale channel to retailers or restaurants. Over the years, the marketplace has changed with the introduction of club type stores that provide consumers the opportunity to purchase both consumer and non-consumer (non-retail) packages. These changes have sometimes led to confusion for both state officials and packers as to how to label packages for sale through wholesale outlets that could also be offered for sale in retail stores.

In clarifying its regulations in Title 21 CFR 101.7(s), the FDA stated that on a multiunit retail packages (consumer package), a statement of the net quantity of contents shall appear on the outside of the package and shall include the number of individual units, the quantity of each individual unit, and, in parentheses, the total quantity of contents of the multi-unit package (refer to NIST Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality,” Uniform Packaging and Labeling Regulation [UPLR], Section 10.4. in Multi-Unit Packages). This format allows for consumers to make value comparisons and to make an informed purchase.

The FDA also explained that a non-consumer package must bear a label that contains an accurate statement of quantity of contents in terms of weight, measure, or numerical count in accordance with Section 403(e)(2) of the Federal Food, Drug, and Cosmetic Act but these packages are not required to include a statement of total quantity of contents. However, FDA said, if a non-consumer package is offered or exposed for sale at retail, then it would consider it to be a consumer package and the labeling required for a consumer package would apply.

Based on the guidance from the FDA, a non-consumer package, which bears a declaration of net contents as shown below, would meet both the FDA requirements and those NIST Handbook 130 UPLR, Section 7. Declaration of Quantity:

Non-Consumer Packages:

Box of Produce – individual Packages by Net Wt: 8 – 3 LB Bags

Box of Produce – Individual Packages by Count: 12 – 9 CT Bags

Box of Produce – Individual Packages by Net Wt: 12 – 6 oz/170 g

Note: While a total net weight declaration is not required, one may appear on a non-consumer package at the discretion of the packer.

Note: The metric (SI) and U.S. customary systems of weights and measures are recognized as proper measurement systems to be used in declarations of quantity. Units of both systems may be combined in a dual declaration of quantity.

In addition, the declaration of net quantity on a non-consumer package must be accurate and these packages are not exempt from NIST Handbook 130, UPLR, Section 7.5.1. “Symbols and Abbreviations,” so all declarations must include the unit of measure. For example:

Acceptable: 10×2.5 LB or 10×1.1 kg

Not Acceptable: 3×2.5 or 10×1.1

If you have any questions regarding this matter or need additional clarification, contact the Laws and Metric Program staff at (301) 975-4004.