
Industry Guide To Marketing Container Plants

Purpose of the guide

This publication is intended to provide guidance to industry retailers and their suppliers on the minimum information required by law in selling “packaged products,” including containerized plants. This guide summarizes the law and regulations about what types of information are required and how that information must be presented. Where possible, this guide offers specific suggestions on how businesses in the horticulture industry can meet these requirements that have been in the law for a number of years, but are just now coming to the industry’s attention.

Origin of this Guide

With the dramatic increase in container plants sales, state and related weights and measures compliance staff have stepped up their scrutiny of industry marketing practices. These authorities have discovered that some long-time practices in the industry regarding labeling and advertising violate or ignore consumer information requirements. They have warned the industry that it must come into compliance. Retailers not in compliance can incur stop-sale orders and substantial fines and penalties for misleading or inadequate labeling and advertising.

The industry is responding to their warning. Labeling and signage practices in this industry affect businesses along the entire supply chain, from container and label manufacturers, to growers and plant branding firms, to the ultimate retailer. National trade associations representing businesses along the supply chain have appointed multiple task forces to research the law, identify common areas of non-compliance, and develop guidelines to assist industry businesses conform to the law.

Following all these recommendations addresses compliance with these regulations as they are understood, and strict compliance is strongly encouraged. Individual businesses may choose to follow or not to follow all these recommendations, with enforcement consequences varying accordingly.

These guidelines are *strictly voluntary*. They were developed as an aid to facilitate industry compliance with the least amount of disruption and expense over current industry practices. The uniform law and regulations are extensive and provide some flexibility that is beyond the scope of this publication.

The Uniform Law and Regulations

The legal foundation for the required consumer information is found in the Uniform Weights and Measures Law and the Uniform Packaging and Labeling Regulations. The National Conference on Weights and Measures (NCWM) maintains this model law and its implementing regulations.

The National Institute of Standards and Technology (NIST) provides technical assistance to the conference. NIST is also the intermediary between these weights and measures representatives and the industries affected by the uniform law and regulations. NIST acts only in an advisory capacity. Enforcement of the law and regulations rests exclusively with state, or subsidiary government, weights and measures personnel.

Fortunately for businesses, no state may enact a law or adopt regulations that are more burdensome than the uniform law adopted by the National

Conference. NIST *Handbook 130* is the federal publication containing the uniform law and regulations on packaging and labeling. Copies of *Handbook 130* may be purchased from NCWM at www.ncwm.net. The *Handbook* is also available through download via the internet from the weights and measures section of the NIST website: www.nist.gov.

Compliance is possible!

Keep in mind that the uniform law and regulations require information that is designed to assist the consumer, rather than the producer or retailer. They address the *minimum* amount and the format of information required. Information on signage and labels that many businesses will want to provide consumers (e.g. horticultural practices) is acceptable—provided it does not conflict with or obscure the required information.

Many industry businesses will discover that they can comply by making only minor changes in signage and labeling. These changes will result in information that consumers are already accustomed to seeing on other packaged products, e.g., references to metric measurement that have become commonplace.

Given the industry's numerous plants, container sizes, growers, and labeling practices, a single approach with all products is unlikely to work. These regulations also apply to decorative, irregularly shaped containers, and dish gardens. Retail businesses may find that unique circumstances are best met using signage, rather than individual labels to provide some required information for some plants or displays.

Summary of Regulations

The purpose of this law is to assist a consumer in *comparing similar products by using uniform and consistent price and quantity information on the product package, or in advertising and signage.*

This information is not intended to help market the product. Decorative graphics and supplemental marketing information on the package cannot contradict, confuse, or obscure the information that is required for product comparison.

This law applies only to retail sales of products to consumers and not to transactions between wholesale suppliers and retailers. This law does not affect sales transactions within the industry, such as those conducted using the American Standards for Nursery Stock. The retailer, through the normal course of business, may seek assistance from suppliers in providing the required information.

The required information must be accurate. In no case may the quantity of the product be less than represented. There is reasonable allowance for the average of the quantity to be slightly more than represented, but not so as to mislead or in anyway deceive the consumer in comparing similar products.

The required information must be easily accessible to the consumer. The size of labels and the typeface used to describe the information must be sufficiently large for the necessary information to be legible. The required information may be presented on labels or in signage. Labels include hanging tags, stake tags, and labels affixed to the container. The location of the required information must not entail unreasonable handling of the product, and store signage must be in proximity to the product.

In short, the easiest way for the industry to comply with the spirit of this law is to make this information easy for consumers to find, understand and use to make price and quantity comparisons.

Three Kinds of Required Information

1. The Declaration of Identity—

This declaration must describe the product: in this case, a name of the plant. The identity can be the common name of the plant, such as “daisy,” or it can be more specific, for example, “Shasta daisy” or the botanical name. In the case of containers having more than one type of plant, terms such as “mixed annuals” or “mixed perennials” are acceptable. The same applies to signage. (For reasons other than this law, some states require botanical names.)

2. The Declaration of Net Contents— This declaration must describe the contents in terms of weight, measure, or count. There are several methods that might be used by the industry for this declaration. For transactions within the industry, it is common practice to refer to the volume of the container. *Therefore, this guide recommends that industry businesses use the volume of the container as the method for declaring net contents.*

The model law requires that quantity declarations must be in both U.S. (inch, pound, ounces) and metric (meter, grams, liter) measure. The container quantity may be expressed as either the dimensions or volume capacity of the container. For irregular-shaped containers, the law requires that the dimensions must include top diameter, bottom diameter, and height. (Reference to top diameter only is not acceptable.)

Because the declaration must be expressed in both U.S. and metric measure, using the container’s dimension would require six numbers—top and bottom diameters and depth. Using the container’s volume requires only two numbers: one in U.S. and one in metric.

This guide recommends that the declaration of net contents be expressed

in terms of the volume capacity of the container. Industry practice in some industry sectors already refers to container volume using liquid measure (e.g. pint, quart and gallon). Therefore, this guide recommends that industry businesses describe the container’s net contents in U.S.—fluid ounces, pints, quarts and gallons—and in metric—milliliters and liters (see chart of abbreviations included with this document); for example:

6 fl oz (180 ml)

3. The Declaration of Responsibility—The declaration of responsibility provides the consumer with the location of the vendor, distributor, or retailer of a product. If the product is offered to the consumer by any business other than the grower of the plant, at any place other than on the premises where grown, there must be a “declaration of responsibility.” The purpose of this declaration of responsibility is to assist the consumer in comparing similar products. (For example, identical plants produced by the same grower and offered at different prices.) This declaration is not a guarantee or warranty of plant health, for example. It is a declaration of responsibility for plant identity and the accuracy of the net contents declaration.

This responsible business may be the grower, the distributor (e.g. plant brand/marketer), or the retailer. The declaration must include the responsible business name, city, state, and ZIP code. Websites are only considered supplemental information and do not suffice on their own at this time. The declaration may state the principal place of business in lieu of the actual place where the product was grown, distributed, or offered for sale.

This declaration is not required for retailers that grow all their own container plant material on the actual premises where those plants are offered for sale to consumers. *Retail growers are required to have a declaration of responsibility for all material grown off-premises.* Retailers with a mix of “home grown” and “brought-in”

containers must have this declaration for purchased containers.

Retailers offering products grown by other businesses must determine how to handle this declaration. Some retailers may choose to declare themselves responsible; others may want or permit the names of growers or distributors on labels and signage. Regulations specify that when a product is sold by someone other than the manufacturer, the declaration of responsibility will qualify that relationship with a phrase such as “grown by” or “distributed by.”

The following are sample declarations of responsibility:

For production by retailer off premises:

“Grown by: ABC Garden Center
Washington, DC 20005”

For production by others:

“Grown for: ABC Garden Center
Washington DC 20005” **OR**

“Grown by: ABC Growers
Anytown, MD 20105”

Net Contents Declaration for Market Packs

The regulations include instructions on how the declaration of net contents must be expressed for products with multiple units, such as market packs. The *net contents declaration must include the total count and both the unit cell volume and the total volume of all cells*. The following description is an example of this combination declaration:

6 cell x 2 fl oz [60ml]
Total 12 fl oz [360 ml]

Market packs are sometimes combined into larger packages for sale, e.g., a “flat” that contains four packs. If the four packs can be separated and sold separately, then the net contents declaration on labeling or signage would refer to the count and volumes of units in each pack, not the flat. In this example, each pack

would require a label/tag or, in place of individual tags, signage. For these declaration purposes, signage would refer to the individual market packs and pack count per flat with pricing by the flat.

Presentation of the Three Kinds of Required Information

The required information may appear on either signage **or** container labels. Retailers can decide which method (sign or label) is preferred and that method may vary among separate plant displays in the same store. *The declaration of identity and net contents must appear together, on either signage or labeling as described below*. The location of the declaration of responsibility is more flexible.

The declaration of identity and the declaration of net contents must be in close proximity; for example, on the same side of a double-sided label or sign. The declaration of net contents must be located in the bottom 30 percent of the label/sign. The declaration of responsibility may accompany the other two declarations, or may appear elsewhere on the product or signage. Product advertising that includes any pricing must also provide the declaration of net contents of products offered at that price.

Supplemental Declarations of Quantity— The required net contents declaration may be supplemented by additional information. The supplemental information must be visually separate from the required information and cannot be incomplete or presented in a fashion to confuse the consumer regarding the required information. For example, terms like “large” quart would not be allowed (a quart is a quart). Using a term such as “10-inch basket” is incomplete. Terms such “10-inch outside diameter” is an improvement, but is technically incomplete because it lacks reference to the bottom diameter and container depth.

Label Variations

The law provides for different requirements for different types of labels.

Standard Label— This is a label typically found on a consumer package. It often includes graphics, branding, promotional information, and directions for product use. This label may cover the entire container. With so much information, it is possible for the required declarations to be missed or hard to find. For this reason, the regulations have details regarding how the declarations must appear on this kind label.

These details include provision for a “principal display panel” (PDP) that is, essentially, the “front” of the package. This “front” consists of one whole side of a square container, or the “span of view” of a cylindrical container. The PDP must contain the declaration of identity and the declaration of net contents. The format of information on the PDP portion of a standard label must be graphically presented to suggest that it contains the most important information.

Hanging tags and stake tags, with any graphics (e.g., plant photo) or supplemental information (e.g., horticultural) would be considered a standard label according to these regulations.

Spot Label— This is a plain label that covers only a small portion of the surface of the PDP, for example a typical “sticky” label on a plant pot. The spot label must exist apart from any other package information. It must have a border in order to stand out visually. A spot label that contains all three declarations is sufficient to meet the labeling law, but it must at least indicate the identity and net contents (with the responsibility declaration elsewhere, or not required when sold by the grower). The spot label may also contain a

barcode, provided that the identity and net contents are legible, with the net contents at the bottom of the label.

Either standard labels with the required format, or spot labels with their required format on plant containers are acceptable. See samples of these labels at the end of this guide. *Reminder: Signage can be used instead of individual container labels.*

Stickers— There is no prohibition against using stickers on the PDP of standard labels in order to fulfill the required information, i.e., plant identity or net contents, provided the location and format of the sticker complies with all other requirements.

Container Embossing— Required declarations may be embossed on a container as long as both the net contents and identity declaration are included. If there is any other information included on the container in a contrasting color, then the embossed information needs to be presented in a contrasting color to the container as well.

Requirements for Information Presentation

Abbreviations:

U.S. Measure

fluid ounces = fl oz
pint = pt pints = pt
quart = qt quarts = qt
gallon = gal gallons = gal

Metric Measure

milliliter = mL or ml
milliliters = mL or ml
liter = L or l
liters = L or l

Largest whole unit:

In general, volume shall be expressed in terms of the largest whole unit, with any remainder expressed as a common or decimal fraction.

Acceptable

3 quarts
1.25 gal
1.5 liters

Not Acceptable

.75 gallon or 6 pints
160 fl oz
1500 mL

Rounding: Regulations recommend that in order to avoid overstating contents, all rounding be done as rounding down, not rounding up. The number of significant digits retained must be such that accuracy is neither sacrificed nor exaggerated. In most instances in this industry's containers, quantities stated to no finer than two decimal places (.00's) is sufficient (examples: 1.29 gal, 3.4 fl oz).

Type or print formats: A declaration may appear on one or more lines of type. Both upper and lower case letters are acceptable. Typeface must be at least 1/16" in size. Free space: There must be the equivalent of at least one line of type free of information both above and below the net contents declaration, and a width the equivalent of two letters (i.e., the letter "N") left and right of the declaration.

Timetable for implementation of these regulations

The Uniform Law and regulations have been in place for a number of years and immediate enforcement of compliance is a possibility. Typically, when an industry becomes aware of its non-compliance and its businesses evidence good faith effort to comply quickly, there is a "grace period." This grace period involves first-time warnings and a reasonable period for current inventories of non-complying labels to be exhausted.

Most enforcement officials will be less lenient about signage that is incorrect, and they may expect the retailer to use signage with correct information to offset container labels that are not in compliance. Similarly, because advertising generally has shorter lead-time than label ordering, officials will also be less lenient about incomplete or inaccurate advertising.

Based on the law's long-time existence, and given traditional enforcement practices, this guide recommends that the industry do the following:

- Immediately modify or augment current signage to provide the necessary declarations in the required formats.
- Immediately ensure that any future placement of advertising with any pricing includes the necessary declarations of identity and net contents, in compliance with these regulations.
- Make the necessary adjustments to container labeling in the next ordering cycle.

Implementation Recommendations for Various Types of Businesses

Container manufacturers— Container manufacturers will want to provide the volume capacity information in both U.S. and metric measure to all of their container customers as soon as possible. It is recommended that the volume be expressed in terms of ounces/pints/quarts/gallons (U.S.) and milliliters/liters (metric). When applicable and appropriate, fractions of these quantities should include up to two digits right of the decimal (.00's) and/or rounding as described above.

Label manufacturers— Label manufacturers will become a primary source for information on how plant labels and related signage can be modified to fully comply with this labeling law and regulations.

Production growers— Production growers that are under contract to provide labels and/or signage will need to know what the labeling law requires regarding standard and spot labels that they may be providing under contract with their retail customers.

Traceability—Also, though a distinct issue from the labeling regulations, for plant pest and quarantine purposes, growers may wish to consider whether their labeling scheme allows for easy identification of product based on grower and place of production. Traceability and easy identification through final consumer

sale can minimize potential losses resulting from regulatory holds or destruction orders.

Distributors— Distributors need to understand the law in order to respond both up and down channel. They may need to communicate with growers and manufacturers regarding labeling and product descriptions and specifications. They may also need to communicate with retail customers regarding labeling needs.

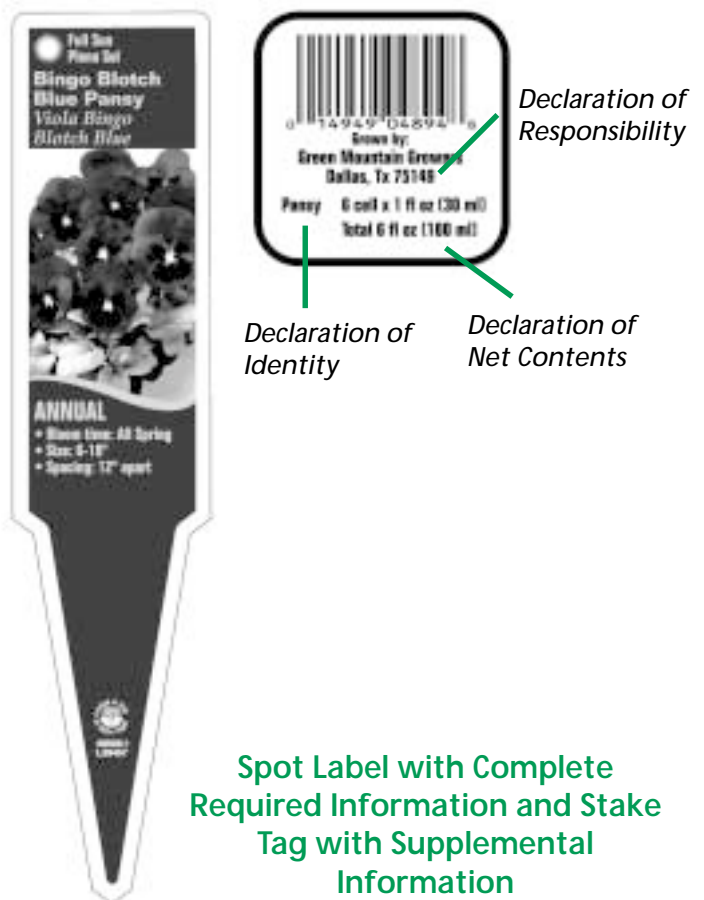
Plant branding and marketing firms— These firms need to understand this law to determine its effect on current labeling, signage and promotion material relating to their branded plants.

Retailers— Retailers need to understand the three kinds of required information and then decide how and where they want that information to appear (i.e. on signage or on labels). The choice of the party listed for the declaration of responsibility is an individual business decision. Decisions regarding the responsibility declaration may be affected by both marketing and cost considerations. For example, “private brand” or “house brand” material could carry the retailer’s name in the declaration and be identified by terms such as “Grown for _____.” Other plants may have a responsibility declaration attributed to a grower, distributor or plant marketer.

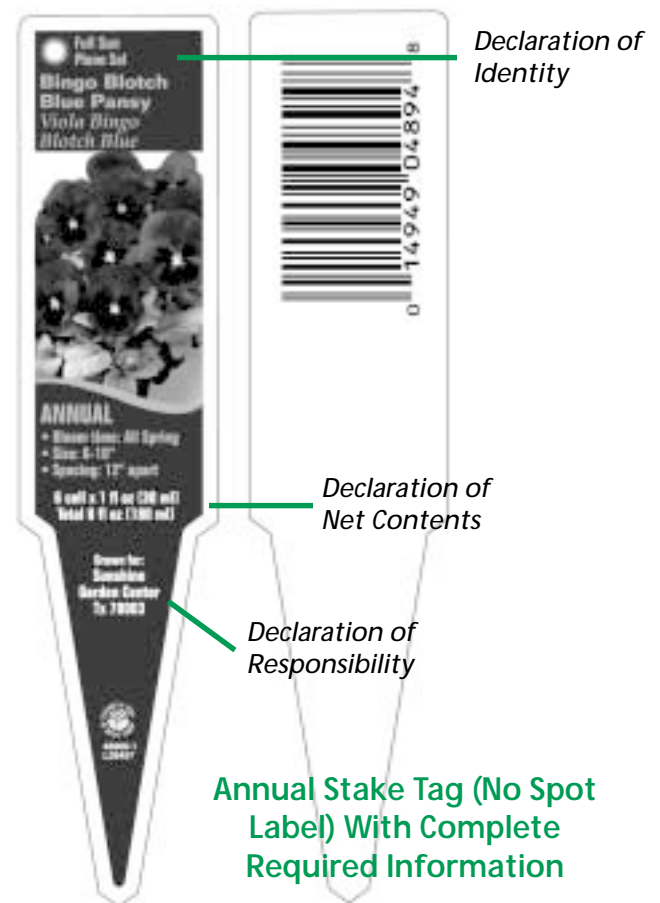
For further information:

All businesses are encouraged to consult the NIST *Handbook 130* for more details. Members of the industry trade associations endorsing this guide may contact their associations for further information. Other industry businesses should contact their label suppliers or the National Institute of Standards and Technology at www.nist.gov or NIST Weights and Measures Division, Gaithersburg, MD 20899.

The following samples illustrate the different ways the packaging law and regulations can be met through labels and signage:



Spot Label with Complete Required Information and Stake Tag with Supplemental Information



Annual Stake Tag (No Spot Label) With Complete Required Information

Declaration of Identity



Declaration of Net Contents

Declaration of Responsibility

Standard Label (No Spot Label) for Use With Specific Pot Size With Complete Required Information



Declaration of Identity

Declaration of Responsibility

Declaration of Net Contents

Combination Standard Label and Spot Label (for use with multiple-sized containers)



Advertisement

Declaration of Identity

Declaration of Net Contents



Declaration of Identity

Declaration of Net Contents

Declaration of Responsibility

Sign Containing All Required Information



This document was prepared by ANLA with the assistance of SAF, NAHSA, PMA and OFA.



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