

## § 1.21

deliver any such commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(c) Containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231-233), the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234-236), the Act of August 31, 1916 (39 Stat. 673, as amended; 15 U.S.C. 251-256), or the Act of May 21, 1928 (45 Stat. 635, as amended; 15 U.S.C. 257-257i).

(d) Containers used for tray pack displays in retail establishments.

(e) Transparent wrappers or containers which do not bear written, printed, or graphic matter obscuring the label information required by this part.

A requirement contained in this part that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or information also appears on the outer container or wrapper of the retail package of the article, or, as stated in paragraph (e) of this section, such information is easily legible by virtue of the transparency of the outer wrapper or container. Where a consumer commodity is marketed in a multiunit retail package bearing the mandatory label information as required by this part and the unit containers are not intended to be sold separately, the net weight placement requirement of §101.105(f) applicable to such unit containers is waived if the units are in compliance with all the other requirements of this part.

[42 FR 15553, Mar. 22, 1977, as amended at 75 FR 73953, Nov. 30, 2010]

### § 1.21 Failure to reveal material facts.

(a) Labeling of a food, drug, device, cosmetic, or tobacco product shall be deemed to be misleading if it fails to reveal facts that are:

(1) Material in light of other representations made or suggested by statement, word, design, device or any combination thereof; or

(2) Material with respect to consequences which may result from use of the article under: (i) The conditions

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prescribed in such labeling or (ii) such conditions of use as are customary or usual.

(b) Affirmative disclosure of material facts pursuant to paragraph (a) of this section may be required, among other appropriate regulatory procedures, by

(1) Regulations in this chapter promulgated pursuant to section 701(a) of the act; or

(2) Direct court enforcement action.

(c) Paragraph (a) of this section does not:

(1) Permit a statement of differences of opinion with respect to warnings (including contraindications, precautions, adverse reactions, and other information relating to possible product hazards) required in labeling for food, drugs, devices, cosmetics, or tobacco products under the Federal Food, Drug, and Cosmetic Act.

(2) Permit a statement of differences of opinion with respect to the effectiveness of a drug unless each of the opinions expressed is supported by substantial evidence of effectiveness as defined in sections 505(d) and 512(d) of the act.

[42 FR 15553, Mar. 22, 1977, as amended at 77 FR 5176, Feb. 2, 2012]

### § 1.23 Procedures for requesting variations and exemptions from required label statements.

Section 403(e) of the act (in this part 1, the term *act* means the Federal Food, Drug, and Cosmetic Act) provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 403(i) of the act provides for the establishment by regulation of exemptions from the required declaration of ingredients where such declaration is impracticable, or results in deception or unfair competition. Section 502(b) of the act provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 602(b) of the act provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 5(b) of the Fair Packaging and