

FTC Seeks Comment Regarding Retail Food Store Advertising and Marketing Practices Rule

August 18, 2011

On August 18, 2011 the FTC issued a [request for public comment and advance notice of proposed rulemaking \(ANPR\)](#) as part of the Commission's review of the costs, benefits, necessity, and regulatory and economic implications of its "Retail Food Store Advertising and Marketing Practices" rule, commonly called the "Unavailability Rule," 16 C.F.R. Part 424.

Currently, the Unavailability Rule states that it is an unfair or deceptive act or practice for "retail food stores" to advertise "food, grocery products or other merchandise" at a stated price if those stores do not have the advertised products in stock and readily available to consumers during the effective period of the advertisement. The Rule includes a provision that permits stores that do not have the advertised products in stock and readily available to comply with the Rule if "the advertisement clearly and adequately discloses that supplies of the advertised products are limited or the advertised products are available only at some outlets." In addition, the rule provides that it would not be a rule violation if: (1) The store ordered the advertised products in adequate time for delivery in quantities sufficient to meet reasonably anticipated demand; (2) the store offers a "rain check" for the advertised products; (3) the store offers a comparable product at the advertised price reduction; or (4) the store offers other compensation at least equal to the advertised value.

According to the ANPR, "the Commission now solicits comments on, among other things, the economic impact of, and the continuing need for, the Unavailability Rule; the benefits of the Rule to consumers purchasing products at retail food stores; and the burdens the Rule places on firms subject to this requirement." The Commission also is considering whether to broaden the Rule to include stores not currently covered, such as drugstores, department stores, and electronic retailers. Comments can be filed online or on paper and must be received by the FTC on or before October 19, 2011.