



**[BILLING CODE 6750-0-01S]**

**FEDERAL TRADE COMMISSION**

**16 CFR Parts 500, 501, 502, and 503**

**Rules, Regulations, Statements of General Policy or Interpretation and Exemptions under the Fair Packaging and Labeling Act**

**AGENCY:** Federal Trade Commission (“FTC” or “Commission”).

**ACTION:** Advance notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Commission systematically reviews its rules and guides to ensure they continue to achieve their intended purpose without unduly burdening commerce. As part of this systematic review, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC’s Rules, Regulations, Statements of General Policy or Interpretation and Exemptions under the Fair Packaging and Labeling Act (“FPLA” or “Act”).

**DATES:** Comments must be submitted by May 21, 2014.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “FPLA Rules, 16 CFR Parts 500-503, Project No. R411015” on your comment, and file your comment online at

<https://ftcpublic.commentworks.com/ftc/fairlabelingact> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex G), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Megan E. Gray, Attorney, (202) 326-3408, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Fair Packaging and Labeling Act, 15 U.S.C. 1451 *et seq.*, enacted in 1966, is designed to facilitate value comparisons and prevent unfair or deceptive packaging and labeling of many “consumer commodities.” Those consumer commodities are any food, device, or cosmetic,<sup>1</sup> and any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.<sup>2</sup>

Several categories of products are exempt from FTC regulations under FPLA. The Act specifically excludes: (a) meat products; (b) poultry; (c) tobacco products; (d) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or certain provisions of the Virus-Serum-Toxin Act; (e) drugs under the jurisdiction of the Food and Drug Administration;

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<sup>1</sup> The Food and Drug Administration administers the FPLA with respect to foods, drugs, cosmetics, and medical devices. 15 USC 1454(a); 15 USC 1456(a).

<sup>2</sup> 15 U.S.C. 1459.

(f) alcoholic beverages; and (g) commodities subject to the Federal Seed Act.<sup>3</sup> Moreover, the FTC has specifically listed items it has deemed not to be consumer commodities subject to the Act, including automotive products, bottled gas for heating or cooking, Christmas light sets, cigarette lighters, clothing and other textiles, durable goods, gift ties and tapes, gift wraps, greeting cards, hardware, inks, lawn and garden supplies, magnetic recording tape, paints and kindred products, pet care supplies, safety flares, safety pins, school supplies, sewing accessories, small arms ammunition, souvenirs, stationary and writing supplies, threads, tools, toys, and typewriter ribbons.<sup>4</sup> Imported consumer commodities are also excluded from FTC enforcement.<sup>5</sup>

Section 1453 of the Act, 15 U.S.C. 1453, directs the Commission to issue regulations requiring that all “consumer commodities” be labeled to disclose: (a) the identity of the commodity (*e.g.*, detergent, sponges), which must appear on the principal display panel of the commodity in a conspicuous type and position so that it is easy to read and understand;<sup>6</sup> (b) the

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<sup>3</sup> 15 U.S.C. 1459.

<sup>4</sup> 16 CFR 503.2, 503.5. Many products exempt from the FTC’s jurisdiction under the FPLA nevertheless fall within the purview of individual state laws. 15 U.S.C. 1461. *See also* National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality (2014 ed.) (compilation of state and federal laws and regulations pertaining to product labeling and packaging).

<sup>5</sup> 15 U.S.C. 1456(c).

<sup>6</sup> 16 CFR 500.4. The identity must be expressed either as the name required by any applicable federal law or regulation, or in the absence thereof, the common or usual name of the commodity, or, in the absence thereof, the generic name or other appropriately descriptive terms that include a statement of function of the product.

name and place of business of the product’s manufacturer, packer, or distributor;<sup>7</sup> and (c) the net quantity of contents in terms of weight, measure, or numerical count, with such disclosure’s placement and content in accordance with the Rules.<sup>8</sup> The Rules detail how units of weight or mass and measure must be stated, and require use of both U.S. measures (*e.g.*, pounds, feet, and gallons) and metric measures.<sup>9</sup>

Title 16 CFR parts 500 through 503 (or the “Rules”) also specify net quantity requirements for packages containing more than one product or unit, including: (a) “multi-unit packages,” defined as packages containing more than one individually packaged or labeled unit of an identical commodity;<sup>10</sup> (b) “variety packages,” defined as packages containing two or more individual packages or units of similar, but not identical, commodities;<sup>11</sup> and (c) “combination packages,” defined as packages containing more than one individual package or unit of different commodities.<sup>12</sup>

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<sup>7</sup> 16 CFR 500.5.

<sup>8</sup> 16 CFR 500.6(b). The Office of Weights and Measures of the National Institute of Standards and Technology, U.S. Department of Commerce, is authorized to promote to the greatest practical extent uniformity in state and federal regulation of the labeling of consumer commodities. 15 U.S.C. 1458(a)(2).

<sup>9</sup> The FPLA was amended in 1992 to require use of metric measurements. 15 U.S.C. 205b. In 1994, the FTC modified its regulations accordingly. 59 FR 1872 (Jan. 12, 1994).

<sup>10</sup> 16 CFR 500.27.

<sup>11</sup> 16 CFR 500.28.

<sup>12</sup> 16 CFR 500.29.

The Act grants the FTC discretionary authority when necessary to prevent consumer deception or to facilitate value comparisons.<sup>13</sup> The FTC has used this authority to issue regulations prohibiting three types of representations. First, the Rules prohibit the use of the term “cents-off” or words of similar import on packaging, unless, among other things, the claim reflects a true savings from the seller’s ordinary and customary price.<sup>14</sup> Second, the Rules prohibit the term “introductory offer” or words of similar import on packaging unless, among other things, the product is new, has been changed in a substantial respect, or is being introduced into the trade area for the first time.<sup>15</sup> Third, the Rules prohibit the term “economy size” or words of similar import on packaging unless, among other things, the product is offered at a per-unit price reduced at least five percent from the actual retail price of all other differently sized packages of the same product offered at the same time.<sup>16</sup>

The Commission completed its last review of the Rules in 1993, and modified the Rules in 1994.<sup>17</sup>

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<sup>13</sup> 15 U.S.C. 1454(c). This discretionary authority enables the FTC to address four situations: (1) setting size standards that supplement label statements of net quantity; (2) regulating packaging that claims a product price is lower than its customary retail price; (3) requiring labels to use common names or listing ingredients in order of decreasing prominence; and (4) preventing nonfunctional slack-fill. 15 U.S.C. 1454(c).

<sup>14</sup> 16 CFR 502.100.

<sup>15</sup> 16 CFR 502.101(b)(1). The Rules prohibit introductory offers in a trade area for a duration in excess of six months. 16 CFR 502.101(b)(3).

<sup>16</sup> 16 CFR 502.102.

<sup>17</sup> 59 FR 1872 (Jan. 12, 1994).



## **II. Regulatory Review Program**

Since 1992, the Commission's regulatory review program has systematically reviewed Commission regulations to ensure that they continue to achieve their intended goals without unduly burdening commerce. The Commission schedules its regulations and guides for review on a ten-year cycle; *i.e.*, all rules and guides are scheduled to be reviewed ten years after implementation and ten years after the completion of each review. The Commission publishes this schedule annually, with adjustments in response to public input, changes in the marketplace, and resource demands.<sup>18</sup>

When the Commission reviews a rule or guide, it publishes a notice in the Federal Register seeking public comment on the continuing need of the rule or guide as well as its costs and benefits to consumers and businesses. Based on this feedback, the Commission may modify or repeal the rule or guide to address public concerns or changed conditions, or to reduce undue regulatory burden. Therefore, the Commission now solicits comments on, among other things, the economic impact of, and the continuing need for, the FPLA Rules; the benefits of the Rules to consumers purchasing products covered by them; and the burdens the Rules place on businesses.

## **III. Request for Comment**

The Commission seeks public comment on: (a) Regulations under Section 4 of the Fair Packaging and Labeling Act, 16 CFR Part 500; (b) Exemptions from Requirements and Prohibitions under Part 500, 16 CFR Part 501; (c) Regulations under Section 5(c) of the Fair Packaging and Labeling Act, 16 CFR Part 502; and (d) Statements of General Policy or

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<sup>18</sup> 78 FR 30798 (May 23, 2013).

Interpretation, 16 CFR Part 503. Specifically, the Commission solicits comments on the following questions related to the Rules.

- (1) Is there a continuing need for the Rules as currently promulgated? Why or why not?
- (2) What benefits have the Rules provided to, or what significant costs have the Rules imposed on, consumers? Provide any evidence supporting your position.
- (3) What modifications, if any, should the Commission make to the Rules to increase their benefits or reduce their costs to consumers?
  - (a) Provide any evidence supporting your proposed modifications.
  - (b) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, including small businesses?
- (4) What impact have the Rules had in promoting the flow of truthful information to consumers or preventing the flow of deceptive information to consumers? Provide any evidence supporting your position.
- (5) What benefits, if any, have the Rules provided to, or what significant costs, including costs of compliance, have the Rules imposed on businesses, including small businesses? Provide any evidence supporting your position.
- (6) What modifications, if any, should be made to the Rules to increase their benefits or reduce their costs to businesses, including small businesses?
  - (a) Provide any evidence supporting your proposed modifications.
  - (b) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, including small businesses?
- (7) Provide any evidence concerning the degree of industry compliance with the Rules. Does this evidence indicate that the Rules should be modified? If so, why and how? If not, why not?
- (8) Provide any evidence concerning whether any of the Rules' provisions are no longer necessary. Explain why these provisions are unnecessary.
- (9) What potentially unfair or deceptive practices concerning product packaging and labeling, falling within the FTC's purview under the Act, are occurring in the marketplace?

- (a) Provide any evidence, such as empirical data, consumer perception studies, or consumer complaints, demonstrating the extent of such practices.
  - (b) Provide any evidence demonstrating whether such practices cause consumer injury.
  - (c) With reference to such practices, should the Rules be modified? If so, why and how? If not, why not?
- (10) What modifications, if any, should be made to the Rules to account for current or impending changes in technology or economic conditions?
  - (a) Provide any evidence supporting the proposed modifications.
  - (b) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, including small businesses?
- (11) Do the Rules duplicate or conflict with other federal, state, or local laws or rules, such as those enforced by U.S. Food and Drug Administration? If so, how?
  - (a) Provide any evidence supporting your position.
  - (b) With reference to the asserted conflicts, should the Rules be modified? If so, why and how? If not, why not?
- (12) Provide any evidence concerning whether the Rules have assisted in promoting national consistency with respect to product packaging and labeling.
- (13) Are there foreign or international laws, regulations, or standards with respect to product packaging and labeling that the Commission should consider as it reviews the Rules? If so, what are they?
  - (a) Should the Rules be modified in order to harmonize with these international laws, regulations, or standards? If so, why and how? If not, why not?
  - (b) How would such harmonization affect the costs and benefits of the Rules for consumers and businesses, including small businesses?
  - (c) Provide any evidence supporting your position.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 21, 2014. Write “FPLA Rules, 16 CFR Parts 500-503, Project No. R411015” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission website. Because your comment will be made public, you are solely responsible for ensuring your comment doesn’t include any sensitive personal information, such as anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for ensuring your comment doesn’t include any sensitive health information, like medical records or other individually-identifiable health information. In addition, don’t include any “[t]rade secret or any commercial or financial information which is . . . privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don’t include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to treat your comment as confidential, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure

explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>19</sup> Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To ensure the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/fairlabelingact> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “FPLA Rules, 16 CFR Parts 500-503, Project No. R411015” on your comment and on the envelope and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex G), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The

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<sup>19</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

Commission will consider all timely and responsive public comments received on or before May 21, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

**List of Subjects in 16 CFR Parts 500 through 503**

Labeling, Packaging and containers.

Authority: 15 U.S.C. 1453, 1454, 1455, 1456.

By direction of the Commission.

Donald S. Clark  
Secretary.

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