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FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

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

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend through March 31, 2015, the current Paperwork Reduction Act (“PRA”) clearance for the information collection requirements in the Fair Packaging and Labeling Act (“FPLA”) regulations. That clearance expires on March 31, 2012.

DATES: Comments must be filed by [insert date 60 days after date of publication in the FEDERAL REGISTER].

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 “Fair Packaging & Labeling Regs, PRA

Comments, P074200” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/fplaPRA> 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 J), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald D. Lewis, Supervisory

Investigator, Division of Enforcement, Bureau of Consumer Protection, (202) 326-2985,

Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501-3521, Federal

agencies must get OMB approval for each collection of information they conduct or sponsor. “Collection of information” includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the FPLA regulations. 44 U.S.C. 3506(c)(2)(A).

The FTC invites comments on: (1) whether the labeling requirements in the FPLA regulations are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the labels; and (4) how to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

The FPLA, 15 U.S.C. 1451-1461, was enacted to eliminate consumer deception concerning product size and package content. Section 4 of the FPLA specifically requires packages or labels to be marked with: (1) a statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of a company that is responsible for the product. The FPLA regulations, 16 CFR Parts 500 - 503, specify how manufacturers, packagers, and distributors of “consumer commodities”¹ must do this.

¹ “The term consumer commodity or commodity means any 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.” 16 CFR 500.2(c). For the precise scope of the term’s coverage see 16 CFR 500.2(c); 503.2; 503.5. See also

Estimated annual hours burden: 8,574,900 total burden hours (solely relating to disclosure²)

The number of companies used in the estimate is drawn from the most recent census available.³ Commission staff conservatively estimates that approximately 857,490⁴ manufacturers, packagers, distributors, and retailers of consumer commodities make disclosures at an average burden of ten hours per entity, for a total disclosure burden of 8,574,900 hours.

Estimated annual cost burden: \$186,932,820 (solely relating to labor costs)

The estimated annual labor cost burden associated with the FPLA disclosure requirements consists of one hour of managerial and/or professional time per covered entity (at an hourly rate of \$54), plus two hours of specialized clerical support⁵ (at an hourly rate of \$26), and seven hours of clerical time per covered entity (at an hourly rate of \$16), for a total of \$186,932,820 (\$218 blended labor cost per covered entity x 857,490 entities).⁶

<http://www.ftc.gov/os/statutes/fpla/outline.html>.

² To the extent that the FPLA-implementing regulations require sellers of consumer commodities to keep records that substantiate “cents off,” “introductory offer,” and/or “economy size” claims, Commission staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates.

³ See <http://www.census.gov/econ/census07>. The 2007 Economic Census data is found d at http://www.factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ECN&_tabId=ECN1&_submenuId=datasets_4&_lang=en&_ts=246366688395.

⁴ Although this figure is not rounded, it is an estimate as it is the sum total of projected industry codes subject to the FPLA. But, even allowing for industries that may apply, the Census data do not separately break out non-household products from household use. Accordingly, the source information is over-inclusive and thus overstates what is actually subject to the FPLA.

⁵ “Specialized clerical support” consists of computer support personnel who design the appearance and layout of product packaging, including appropriate display of the disclosures required by the FPLA regulations.

⁶ Based generally on the National Compensation Survey: Occupational Earnings in the United States,

Total capital and start-up costs are de minimis. For many years, covered businesses have done the packaging and labeling activities that require capital and start-up costs in the ordinary course of business independent of the FPLA regulations. Similarly, firms provide consumers the required information in the ordinary course of business.

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [insert date 60 days from FEDERAL REGISTER date of publication]. Write “Fair Packaging & Labeling Regs, PRA Comments, P074200” 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 making sure that your comment does not include any sensitive personal information, like 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 making sure that your comment does not include any sensitive health information, like medical records or other

2010, U.S. Department of Labor, U.S. Bureau of Labor Statistics (May 2011) (“BLS National Compensation Survey”) (citing the mean hourly earnings for management occupations, legal occupations/lawyers, and assorted clerical positions), available at <http://www.bls.gov/ncs/ncswage2010.html>. Clerical estimates are derived from the above source data, applying roughly a mid-range of mean hourly rates for potentially applicable clerical types, e.g., computer operators, data entry and information processing workers.

individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential” as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give you comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).⁷ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, 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 make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/fplaPRA>, by following the instructions on the web-based form. In this Notice appears at <http://www.regulations.gov/#!>, you also may file a comment through that website.

If you file your comment on paper, write “Fair Packaging & Labeling Regs, PRA comments, P074200” 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

⁷ 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

(Annex J) 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 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 Commission will consider all timely and responsive public comments that it receives on or before (insert date 60 days from FEDERAL REGISTER date of publication). 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>.

Willard K. Tom
General Counsel.

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