



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

16 CFR Part 301

Regulations Under the Fur Products Labeling Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Federal Trade Commission proposes to amend its Regulations under the Fur Products Labeling Act to update its Fur Products Name Guide, provide more labeling flexibility, incorporate recently enacted Truth in Fur Labeling Act provisions, and eliminate unnecessary requirements. The Commission does not propose changing or providing alternatives to the required name on labels for *nyctereutes procyonoides* fur products. The Commission also does not propose changing the Rules' product coverage scope or continuing guaranty provisions.

DATES: Comments must be received on or before November 16, 2012.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: <https://ftcpublic.commentworks.com/ftc/furrulesreviewnprm> (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex O), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Matthew Wilshire, (202) 326-2976, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION

I. Introduction

On March 14, 2011, the Federal Trade Commission (“FTC” or “Commission”) invited comment on its Rules and Regulations (“Fur Rules” or “Rules”) under the Fur Products Labeling Act (“Fur Act” or “Act”), including its Fur Products Name Guide (“Name Guide”).¹ After considering the comments and holding a public hearing, the Commission proposes updating the Name Guide, providing greater labeling flexibility, incorporating provisions of the recently enacted Truth in Fur Labeling Act (“TFLA”), and, on its own initiative, deleting unnecessary requirements.

The Commission declines to propose other amendments suggested by commenters. Although some supported changing the Name Guide’s required name for *nyctereutes procyonoides*, the Commission proposes retaining “Asiatic Raccoon” as the only name for that species. As discussed below, the record shows that “Asiatic Raccoon” is the best name to identify the animal for consumers. Furthermore, alternative names suggested by commenters either risk misleading consumers or cannot be used to identify the animal.

¹76 FR 13550 (Mar. 14, 2011). The Name Guide lists the English animal names that must appear on fur-product labels.

This supplementary information section first provides background on the Fur Act and Rules, the Name Guide, TFLA, and this rulemaking. Next, it summarizes the comments. Finally, it analyzes those comments and discusses the proposed amendments.

II. Background

A. The Fur Act and Rules

The Fur Act prohibits misbranding and false advertising of fur products, and requires labeling of most fur products.² Pursuant to this Act, the Commission promulgated the Fur Rules. These Rules set forth disclosure requirements that assist consumers in making informed purchasing decisions.³ Specifically, the Fur Act and Rules require fur manufacturers, dealers, and retailers to label products made entirely or partly of fur. These labels must disclose: (1) the animal's name as provided in the Name Guide; (2) the presence of any used, bleached, dyed, or otherwise artificially colored fur; (3) that the garment is composed of, among other things, paws, tails, bellies, sides, flanks, or waste fur, if that is the case; (4) the name or Registered Identification Number of the manufacturer or other party responsible for the garment; and (5) the product's country of origin.⁴ In addition, manufacturers must include an item number or mark on the label for identification purposes.⁵

²15 U.S.C. 69 *et seq.*

³16 CFR Part 301.

⁴15 U.S.C. 69b(2); 16 CFR 301.2(a).

⁵16 CFR 301.40.

The Rules also include detailed labeling specifications. For example, the Rules specify an exact label size of 1.75 inches by 2.75 inches,⁶ require disclosures on the label in a particular order,⁷ and prohibit non-FTC information on the front of the label.⁸

Finally, the Fur Act requires the Rules to provide for separate and continuing guaranties.⁹ These documents allow an entity to provide a guarantee to another entity that the fur products it manufactures or transfers are not mislabeled or falsely advertised or invoiced. Separate guaranties specifically designate particular fur products.¹⁰ Continuing guaranties, which guarantors file with the Commission, apply to “any fur product or fur handled by a guarantor.”¹¹ The Act provides that a guaranty recipient will not generally be liable for violations related to the guaranteed goods.¹²

B. The Name Guide

The Fur Act requires the Commission to maintain “a register setting forth the names of hair, fleece, and fur-bearing animals.”¹³ The Act further requires that these

⁶16 CFR 301.27.

⁷16 CFR 301.30.

⁸16 CFR 301.29(a). By contrast, the Commission’s Rules and Regulations (“Textile Rules”) under the Textile Fiber Products Identification Act (“Textile Act”), which apply to clothing generally, do not have such restrictions.

⁹15 U.S.C. 69h; 16 CFR 301.46; 301.47; 301.48; and 301.48a.

¹⁰15 U.S.C. 69h(a)(1).

¹¹15 U.S.C. 69h(a)(2).

¹²15 U.S.C. 69h(a).

¹³15 U.S.C. 69e(a).

names “be the true English names for the animals in question, or in the absence of a true English name for an animal, the name by which such animal can be properly identified in the United States.”¹⁴ For example, the Name Guide requires covered entities to label *mustela vison* as “mink.”¹⁵

The Commission first published the Name Guide in 1952. Under the Fur Act, the Commission can amend the Name Guide only “with the assistance and cooperation of the Department of Agriculture and the Department of Interior” and “after holding public hearings.”¹⁶ Prior to this rulemaking, the Commission had amended the Name Guide twice, most recently in 1967.¹⁷

C. TFLA

In 2010, Congress enacted TFLA,¹⁸ which revoked one Fur Act exemption and replaced it with another. Specifically, TFLA deleted a Fur Act provision that authorized the Commission to exempt fur products of relatively low value from labeling requirements. Under that authority, the Fur Rules exempted products with a fur component valued at less than \$150.¹⁹ TFLA eliminated this *de minimis* exemption²⁰ and enacted a new, more limited exemption for furs sold

¹⁴*Id.*

¹⁵16 CFR 301.0.

¹⁶15 U.S.C. 69e(b).

¹⁷32 FR 6023 (Apr. 15, 1967).

¹⁸Pub. L. No. 111-113.

¹⁹16 CFR 301.39(a).

²⁰Pub. L. No. 111-113, § 2.

directly by trappers and hunters to end-use customers in certain face-to-face transactions (“hunter/trapper exemption”). The new exemption provides:

No provision of [the Fur Act] shall apply to a fur product – (1) the fur of which was obtained from an animal through trapping or hunting; and (2) when sold in a face to face transaction at a place such as a residence, craft fair, or other location used on a temporary or short term basis, by the person who trapped or hunted the animal, where the revenue from the sale of apparel or fur products is not the primary source of income of such person.²¹

In addition, TFLA required the Commission to initiate a review of the Name Guide.²²

D. Procedural Background

In March 2011, as part of its comprehensive program to review all FTC rules and guides and in response to TFLA, the Commission opened a review of the Name Guide by seeking comment. As part of its regulatory review program,²³ the Commission also sought comment on the Fur Rules generally.²⁴ The Commission received 15 comments.²⁵

²¹*Id.* at § 3.

²²*Id.* at § 4.

²³For further discussion of the program, *see* www.ftc.gov/opa/2011/07/regreview.shtm.

²⁴76 FR 13550.

²⁵The comments, along with a transcript of the Name Guide hearing, are available at: <http://ftc.gov/os/comments/furlabeling/>. Citations to comments will identify the commenter name and comment page number containing the relevant discussion (*e.g.*, “FICA at 8.”). Citations to one page comments will only state the commenter name. Citations to the hearing transcript will identify the relevant page and line (*e.g.*, “Tr. at 9, ln. 2.”).

The Commission also held a public hearing on December 6, 2011. The hearing was in roundtable format with an opportunity for audience participation. Four commenters participated in the roundtable: the Humane Society of the United States (“HSUS”); the Fur Information Council of America (“FICA”); the National Retail Federation (“NRF”); and Finnish Fur Sales (“Finnish Fur”). In addition, the hearing included representatives from the United States Department of Agriculture (“USDA”), the United States Geological Survey (“USGS”), and the Fish and Wildlife Service (“FWS”).²⁶

III. The Record

Commenters disagreed about whether and how to amend the Name Guide, particularly the name for *nyctereutes procyonoides*. Several commenters also proposed eliminating unnecessary disclosure requirements and increasing labeling flexibility. In addition, HSUS urged the Commission to limit the use of continuing guaranties. Finally, two commenters suggested changes to the Fur Rules’ product coverage.

A. The Name Guide

Commenters focused on whether the Commission should continue to require labeling *nyctereutes procyonoides* as “Asiatic Raccoon” or change the name to “Raccoon Dog.” Commenters also discussed whether the Name Guide should allow “Finnraccoon” as an alternate name for *nyctereutes procyonoides* that are raised in Finland, and suggested amendments regarding other species.

1. “Raccoon Dog” versus “Asiatic Raccoon”

²⁶USGS and FWS are agencies within the Department of Interior.

All who addressed the subject agreed that *nyctereutes procyonoides*' taxonomic classification is in the canidae family, which includes foxes, wolves, and domestic dogs.²⁷ All commenters further agreed that raccoons are not closely related to *nyctereutes procyonoides*. Although both species are in the same order (carnivora), raccoons are in a different family (Procyonidae).²⁸ Despite agreeing about the animal's taxonomy, commenters sharply disagreed about whether the Name Guide should require entities to label it "Asiatic Raccoon" or "Raccoon Dog."

a. Support for "Raccoon Dog"

HSUS recommended eliminating "Asiatic Raccoon" and replacing it with "Raccoon Dog" for three reasons. First, it asserted that "Raccoon Dog" is the "scientifically accepted common name."²⁹ Specifically, HSUS noted that the Integrated Taxonomic Information System ("ITIS") lists *nyctereutes procyonoides*' common name as "Raccoon Dog."³⁰ At the hearing, HSUS explained that ITIS is "a result of a partnership of federal government agencies formed to satisfy the need for scientifically credible taxonomic information."³¹ HSUS described ITIS members, which include FWS, the Smithsonian Institute, and USGS, as "neutral on the issue of how a

²⁷See, e.g., attachment to HSUS comment at 31.

²⁸See the Smithsonian's *Mammal Species of the World* entry for "Raccoon," available at http://www.vertebrates.si.edu/msw/mswcfapp/msw/taxon_browser.cfm?msw_id=12300.

²⁹HSUS at 7.

³⁰See the ITIS Report for *nyctereutes procyonoides*, available at http://www.itis.gov/servlet/SingleRpt/SingleRpt?search_topic=TSN&search_value=183821.

³¹Tr. at 9, ln. 2-5.

particular industry, including the fur industry, identifies its products.”³² In addition, HSUS asserted that requiring ITIS’s common names would assist consumers because the ITIS “website contains an easily accessible database with reliable information on species names and their hierarchical classification.”³³

Second, HSUS asserted that “Raccoon Dog” has long been the “most widely-accepted common name of the species.”³⁴ As support, HSUS submitted a letter from biologist Lauren Nolfo-Clements attesting that scientists have used “Raccoon Dog” to describe *nyctereutes procyonoides* for “well over a century.”³⁵ In addition, HSUS cited references to the animal as “Raccoon-Like Dog” and “Raccoon Dog” in literature predating the Name Guide, including one encyclopedia claiming that the term “Asiatic Raccoon” was a “guise” to obscure the animal’s relationship to dogs.³⁶ HSUS also pointed to recent uses of “Raccoon Dog” in an FWS press release and in an official publication.³⁷ HSUS did not, however, provide evidence that consumers are more familiar with, or more likely to recognize, “Raccoon Dog” than “Asiatic Raccoon.”³⁸

³²Tr. at 9, ln. 16-21.

³³HSUS at 7.

³⁴HSUS. at 8.

³⁵HSUS at 13 (letter attachment).

³⁶HSUS at 8-9.

³⁷HSUS at 9.

³⁸Tr. at 56, ln. 1-7.

Finally, HSUS contended that “Asiatic Raccoon” is confusing and misleading, while “Raccoon Dog” is not. HSUS observed that “the species is not a raccoon” and “is not just found in Asia, but . . . in numerous European countries.”³⁹ Thus, HSUS asserted, “Asiatic Raccoon” could mislead consumers about the species of the animal that produced the fur and its geographic origin.⁴⁰ At the hearing, HSUS also asserted that “Raccoon Dog,” by contrast, would not mislead consumers because dogs are members of the canidae family, and therefore more closely related to *nyctereutes procyonoides* than raccoons.⁴¹

b. Support for “Asiatic Raccoon”

Other commenters opposed replacing “Asiatic Raccoon” with “Raccoon Dog.” They argued that ITIS or other scientific sources should not determine an animal’s name for labeling purposes, that “Asiatic Raccoon” better describes the animal, and that “Raccoon Dog” labels would mislead consumers and harm retail sales.

Several hearing participants, including government representatives, asserted that ITIS is not a common-name repository. For example, FICA described ITIS as “a tool used internally within the government by scientists involved in wildlife regulatory issue[s] . . . [and] not intended to regulate the sale of fur in the retail marketplace.”⁴² Significantly, hearing participants from the government agreed that ITIS is not necessarily authoritative on common names. Specifically, Dr. Alfred Gardner from USGS, whom ITIS lists as an expert on

³⁹HSUS at 9.

⁴⁰HSUS at 9.

⁴¹Tr. at 48, ln. 21-23.

⁴²Tr. at 15, ln. 9-12.

nyctereutes procyonoides' taxonomy, explained that "[t]he primary function of ITIS is to keep abreast of the changes in scientific names . . . [and] not . . . to establish common names."⁴³ Dr. Gardner further stated that the use of common names listed in scientific guides is "not very consistent" outside of the wildlife management field.⁴⁴ Ms. Sharon Lynn, Senior Wildlife Inspector for FWS, agreed that ITIS does not reflect a scientific consensus regarding species' common names.⁴⁵

More generally, some commenters criticized HSUS's proposal to rely on "scientific consensus" rather than consumer perception.⁴⁶ Consistent with that view, a representative from Finnish Fur attested that, in his experience, consumers would not be familiar with ITIS.⁴⁷ NRF further observed, "how a product is marketed ought to be a critical factor in deciding" the animal's name because marketing often establishes commercial names for unfamiliar products.⁴⁸

Indeed, two commenters noted that consumers have familiarity with "Asiatic Raccoon" through marketplace exposure. Specifically, FICA and Finnish Fur stated that, prior to TFLA's enactment, most *nyctereutes procyonoides* garments did not meet the now-defunct *de minimis*

⁴³Tr. at 26, ln. 5-8.

⁴⁴Tr. at 14, ln. 5-6.

⁴⁵Tr. at 13, ln. 6-9.

⁴⁶Tr. at 16, ln. 16-25, Tr. at 17, ln. 1-6.

⁴⁷Tr. at 17, ln. 11-14.

⁴⁸Tr. at 28, ln. 19-21. NRF gave the example of "Kiwi" fruit as an English name established by marketing. Tr. at 28, ln. 22-25.

exemption and, therefore, would have been labeled as “Asiatic Raccoon.”⁴⁹ HSUS also acknowledged that “Asiatic Raccoon” appears on labels “fairly often.”⁵⁰

Moreover, several commenters asserted that “Asiatic Raccoon” is superior to “Raccoon Dog” because it provides more information to consumers. For example, FICA stated that the term “Raccoon” accurately describes *nyctereutes procyonoides* because it has “rings around its eyes, [so] it clearly looks like a raccoon.”⁵¹ In addition, Ms. Lynn of FWS noted that the word “Asiatic” is helpful, despite the existence of European *nyctereutes procyonoides*, because it “gives you an idea where the animal originated naturally.”⁵² Ms. Lynn further explained that Asia is the species’ “native habitat” and, therefore, “the Asiatic name would be a neutral” description.⁵³ Ms. Lynn observed that using “Asiatic Raccoon” to refer to European *nyctereutes procyonoides* is like the common practice of using “African Lion” to refer to lions raised in America.⁵⁴

Furthermore, some commenters criticized “Raccoon Dog” as inaccurate, asserting that *nyctereutes procyonoides* is not closely related to domestic dog and does not exhibit dog-like behavior. For example, NRF noted that the animal is “not a true-dog or dog-like canine within the genus *Canis* Other canids, . . . such as wolves, coyotes, and jackals, are much more

⁴⁹Tr. at 79, ln. 14-16.

⁵⁰Tr. at 79, ln. 2.

⁵¹Tr. at 42, ln. 12-13.

⁵²Tr. at 38, ln. 22-23.

⁵³Tr. at 39, ln. 6, 11-12.

⁵⁴Tr. at 39, ln. 15-19.

closely related to domestic dogs”⁵⁵ Moreover, according to FICA, “[t]he Asiatic/Finnraccoon exhibits vastly different behaviors than the dog. For example, it hibernates, climbs trees, and it participates in social grooming. . . . [It] cannot bark, and it does not wag its tail.”⁵⁶ In support, FICA submitted a report from wildlife biologist Robert Byrne confirming those behavioral differences and noting other contrasts, including diet (omnivore versus carnivore) and gait (clumsy versus “often very swift”).⁵⁷

Finally, commenters warned that requiring “Raccoon Dog” on a label would mislead consumers into thinking that the species either was, or was closely related to, domestic dog, thereby harming *nyctereutes procyonoides* fur sales. FICA, citing news reports, suggested that the term “has had a devastating impact . . . by causing consumers to believe mistakenly that the product is related to domestic dog.”⁵⁸ NRF concurred, opining that using “Raccoon Dog” to describe the species creates “a huge risk of misinformation.”⁵⁹ As evidence, FICA and Finnish Fur reported that consumer exposure to the name “Raccoon Dog” has harmed sales. Specifically, major retailers Federated Department Stores and Lord & Taylor no longer sell the furs made from the animal because consumers mistake it for domestic dog.⁶⁰ Thus, they asserted requiring

⁵⁵NRF at 4. FICA similarly observed that “[a]lthough the Asiatic Raccoon . . . is part of the family Canidae, like many other animals (*e.g.*, fox, wolves, coyotes), it is completely different from a domestic dog.” FICA at 5.

⁵⁶FICA at 5.

⁵⁷FICA, Attachment 2 at 3-4.

⁵⁸FICA at 6.

⁵⁹Tr. at 36, ln. 7-10.

⁶⁰Tr. at 60, ln. 1-7.

“Raccoon Dog” would essentially “ban” *nyctereutes procyonoides* fur “because [it] will no longer exist in the marketplace”⁶¹

c. Alternatives to “Raccoon Dog” and “Asiatic Raccoon”

NRF suggested “Tanuki” and “Magnut” as alternative names for *nyctereutes procyonoides*.⁶² Dr. Gardner supported “Tanuki” because it “doesn’t carry any baggage.”⁶³ HSUS, however, objected to both names because they are foreign words and, therefore, not true English names.⁶⁴ Furthermore, HSUS represented that Internet searches for “Tanuki” and “Magnut” showed less usage than “Asiatic Raccoon” or “Raccoon Dog.”⁶⁵

2. “Finnraccoon”

FICA, Finnish Fur, and Finland’s Ministries for Foreign Affairs and of Agriculture and Forestry urged the Commission to allow labeling *nyctereutes procyonoides* raised in Finland as “Finnraccoon.” These commenters did not assert that those animals differ in characteristics from *nyctereutes procyonoides* raised in Asia. Rather, they advocated adding the name because “Finnraccoon” would alert consumers that the animal had been raised under European regulations, which they described as stricter and more humane than in Asia. For example, the Finnish Ministries stated:

⁶¹Tr. at 59, ln. 21; Tr. at 43, ln. 19-21.

⁶²NRF at 4. At the hearing, NRF clarified that it supported the current designation of “Asiatic Raccoon” and had proposed the alternatives only in the event that the Commission deleted “Asiatic Raccoon.” Tr. at 69, ln. 13-14.

⁶³Tr. at 71, ln. 19-20.

⁶⁴Tr. at 82, ln. 14-17.

⁶⁵Tr. at 82, ln. 20-24.

[European regulation is] one of the strictest in the world. The EU is party to the European Convention for the protection of animals kept for farming purposes. The Convention aims to protect animals against any unnecessary suffering or injury.

...

As the animal welfare standards in place in Asian countries producing *Nyctereutes procyonoides* are, unfortunately, not as high level as those in place in Finland/Europe, the situation is confusing also to the consumers; the term “Asiatic raccoon” implies misleadingly that the *Nyctereutes procyonoides* fur originates from Asia, when in fact, [the] main part of the world trade originates from Finland.⁶⁶

However, these commenters did not provide evidence that consumers were familiar with “Finnraccoon” or that “Finnraccoon” fur differs materially from other *nyctereutes procyonoides* fur.⁶⁷

HSUS, by contrast, opposed the name, describing it as “industry-coined.”⁶⁸ It further pointed out that fur labels would disclose the country of origin in any event.⁶⁹

3. Other Suggested Name Guide Amendments

⁶⁶Ministry for Foreign Affairs at 1; Ministry of Agriculture and Forestry at 1.

⁶⁷Tr. at 87, ln. 4-7; Tr. at 95, ln. 2-3 (Finnish Fur representative conceding that “from a scientific point of view, I don’t know if there is a difference between Finnish and Asiatic”).

⁶⁸Tr. at 90, ln. 19-20.

⁶⁹Tr. at 91, ln. 20-24.

Commenters also suggested several miscellaneous revisions to the Name Guide. First, HSUS recommended adding a large number of specific common names so that each fur-bearing species has its own common name. For example, HSUS suggested replacing “chipmunk” with specific names for 25 chipmunk species, such as “California Chipmunk,” “Cliff Chipmunk,” etc.⁷⁰ HSUS stated that the Commission should not use one name for multiple species because “[d]ifferent animals experience different sorts of welfare problems in fur production” and different conservation statuses.⁷¹ In addition, FICA and HSUS suggested changing several Name Guide entries to reflect updated taxonomy and to correct errors.⁷²

Second, FICA recommended removing names of animals prohibited for sale as furs, such as domestic dog and cat, because including them is “confusing given their illegal status.”⁷³

HSUS disagreed, pointing out that:

One of the FTC’s purposes here is enforcement [Having the names listed] adds additional layers of enforcement. . . . And to have that additional ability to enforce is important. Quite honestly, I don’t think a retailer should escape liability if the retailer is failing to label dog fur as dog when . . . domestic dog is not allowed to be sold in the United States.⁷⁴

⁷⁰HSUS at 56 (attachment).

⁷¹Tr. at 19, ln. 17-18; Tr. at 20, ln. 4-5.

⁷²FICA at 7. For example, both commenters reported that the Name Guide provides the wrong scientific name for ocelot. FICA at 8; HSUS at 61.

⁷³FICA at 8.

⁷⁴Tr. at 117, ln. 12-21; Tr. at 118, ln. 2-8.

Commenter AAW agreed, noting that the Fur Rules help enforce the cat and dog fur prohibition “by ensuring that all furs are properly identified and labeled.”⁷⁵

Finally, Deckers Outdoor Corporation (“Deckers”) suggested the Name Guide allow the term “Sheepskin” in lieu of “Sheep” and “Lambskin” in lieu of “Lamb.” Deckers asserted that the required names are confusing to consumers.⁷⁶ HSUS disagreed, however, noting the existence of serious problems in sheep-fur labeling prior to issuance of the Fur Rules and that sheepskin is not “skin” but rather fur.⁷⁷

B. Requests for Increased Labeling Flexibility

Six commenters⁷⁸ criticized the Fur Rules’ labeling provisions as overly prescriptive. Specifically, they argued that many labeling requirements provide no consumer benefits while imposing significant burdens. They further noted that TFLA’s elimination of the *de minimis* exemption required labeling more fur products. As discussed below, these commenters recommended more limited disclosures and greater labeling flexibility.

1. Required Information

All commenters who addressed the subject urged the Commission to reduce the amount of required information. For example, Deckers stated that “some of the required information . . . is not of interest to the consumer, and . . . may . . . obscure the information in which the

⁷⁵AAW at 1. “AAW” did not otherwise identify him, her, or itself.

⁷⁶Deckers 2-3.

⁷⁷Tr. at 123, ln. 13-19; Tr. at 124, ln. 5-7.

⁷⁸Deckers, FICA, NRF, the Footwear Distributors and Retailers of America (“FDRA”), McNeese Customs and Commerce (“McNeese”), and Stephen Zelman & Associates (“Zelman”).

consumer is really interested”⁷⁹ Deckers, therefore, urged the Commission to no longer require disclosure of whether fur is natural, pointed, dyed, bleached, or artificially colored, at least for sheepskins, because an altered sheepskin “still looks like sheepskin.”⁸⁰ Deckers also urged no longer requiring disclosure of “sides” or “flanks.” It asserted that “the term ‘side’ is used in the industry to describe one half of an animal hide and is not a term used to describe a part of the animal” and that “a flank is considered the same as the belly, and thus its inclusion is redundant.”⁸¹

Other commenters requested limited disclosures for items containing small amounts of fur. FICA requested that labels for products with only a “small strip” of fur disclose only “fur” and no other information because consumers would not want that additional information.⁸² FICA did not, however, provide any evidence substantiating that assertion. FDRA similarly urged the Commission to revoke the requirement to disclose that the fur consists of paws and tails where the fur is limited to trim, which it suggested be defined as fifteen percent of the item or less.⁸³

2. Label specifications

Commenters also urged greater flexibility regarding the labels’ size, the sequence and location of disclosures, and the requirements for attaching a single label to paired items like

⁷⁹Deckers at 2.

⁸⁰Deckers at 3.

⁸¹Deckers at 3.

⁸²FICA at 10.

⁸³FDRA comment (single page).

shoes. Several commenters criticized the requirement in § 301.27 that all labels measure 1.75 inches by 2.75 inches.⁸⁴ For example, Deckers noted that, “[w]hile the label size currently mandated by the Rules may be appropriate for larger apparel items . . . they are impossible to affix to smaller items The Rules should either exempt smaller products from the size requirements, or simply mandate that the information be no smaller than information provided on other labels found on the product”⁸⁵ NRF agreed, explaining

These requirements are simply not appropriate for the range of smaller garments that are now subject to this law, and would increase costs to retailers and consumers. Specific requirements on label dimensions also limit a retailer’s ability to make a label with a dimension that is suitable to the product, for example narrow belts and gloves Moreover, consumers are not likely to want large, permanent labels on these small products.⁸⁶

To address the issue, NRF suggested requiring “that the label be ‘conspicuous, legible, and durable,’” a standard that it described as “well understood in the industry” and consistent with labeling requirements in the Textile Act, Wool Act, and Care Labeling Rule.⁸⁷

⁸⁴16 CFR 301.27.

⁸⁵Deckers at 6.

⁸⁶NRF at 2.

⁸⁷NRF at 2. *See also* FICA at 10; FDRA comment; Zelman at 2-3. NRF and FDRA criticized the Rules for requiring sewn-in labels. NRF at 3; FDRA comment. In fact, as discussed below, the Rules do not require sewn-in labels. Nevertheless, the Commission proposes an amendment making this clear.

Commenters also criticized the Rules' strict requirements for the order and placement of information on the labels. Regarding § 301.30's requirement that disclosures must be in a specified order, Deckers argued:

The specific order should be determined by the manufacturer, and not by regulation. As all required information must be the same size type, it is unclear why the Rules need to mandate the order of information supplied. Many footwear manufactures [sic], including Deckers Outdoor Corporation, need the flexibility to properly design a label so that it fits a wide range of products.⁸⁸

Commenters also favored lifting § 301.29's prohibition against disclosing on the front of a label any information other than FTC disclosures. Deckers noted that this prohibition may result in requiring multiple labels to comply with the Rules and state regulations.⁸⁹ NRF also requested more flexibility to decide what information appears on the fronts and backs of labels.⁹⁰

Finally, several commenters recommended amending § 301.31, which requires that items sold in pairs, like shoes, must be "firmly attached to each other" until reaching the ultimate

⁸⁸Deckers at 6.

⁸⁹Deckers at 6-7. *See also* FICA at 9; McNeese at 3 (urging the Commission to allow labels that will accommodate disclosures required by foreign governments).

⁹⁰NRF at 2-3. FDRA recommended eliminating a requirement to disclose fur origin for items that already disclose the garment's country of origin on a different label. FDRA comment. Zelman likewise urged not requiring any information on a fur label that is otherwise provided on another conspicuous label. Zelman at 3.

consumer or have a separate label attached to each item.⁹¹ McNeese asserted that requiring firm attachment was “inconsistent with the manner in which footwear is sold”.⁹²

Footwear is sold to consumers in boxes, and only properly labeled samples are available for review prior to the consumer trying on a particular shoe/boot. . . . Both the left and right shoe/boot is presented to the consumer at the point of sale.

McNeese submits that labeling only one shoe/boot with the required [Fur Act] information satisfies the purpose of the statute, which is to inform the consumer of the type of fur, method of treatment (if any), and country of harvest.⁹³

Zelman likewise objected to the attachment requirement, asserting that it would “hurt the trade.”⁹⁴

C. Proposal to Restrict Continuing Guaranties

As discussed above, entities generally are not liable under the Fur Act if they receive a document guaranteeing that all products manufactured or transferred by the guarantor are not misbranded or falsely advertised or invoiced.⁹⁵ One commenter, HSUS, expressed concern that these guaranty programs “are not sufficient to ensure that consumers receive accurate

⁹¹16 CFR 301.31(b).

⁹²McNeese at 3.

⁹³McNeese at 4.

⁹⁴Zelman at 4.

⁹⁵15 U.S.C. 69h(a).

information about the fur content of garments.”⁹⁶ HSUS further asserted that “[n]othing in the [Fur Act] prohibits the FTC from requiring that continuing guarantees [sic] specifically designate the fur products or furs guaranteed, as is required of separate guarantees [sic].”⁹⁷ Therefore, HSUS recommended that the Commission require that “all guarantees [sic] . . . specifically designate the type of fur contained in the fur products or furs guaranteed,” which “would ensure that retailers . . . know exactly where they need to go for the information they should rely on in generating new labels and advertisements.”⁹⁸

D. The Rules’ Coverage

Two commenters recommended altering the scope of the Fur Rules’ labeling requirements, which apply to “wearing apparel.” The Rules define “wearing apparel” as including “[a]ny articles of clothing or covering for any part of the body.”⁹⁹ FICA recommended amending the definition to exclude small items, such as shoes.¹⁰⁰ FICA argued that these items have an “insignificant amount of fur” and would be difficult to label because of their small size.¹⁰¹ FICA further noted that excluding small objects would align the scope of the Fur Rules with the Textile Act,¹⁰² which exempts handbags and shoes.¹⁰³ In contrast to FICA’s request for

⁹⁶HSUS at 10.

⁹⁷HSUS at 10.

⁹⁸HSUS at 11.

⁹⁹16 CFR 301.1(b)(1).

¹⁰⁰FICA at 9.

¹⁰¹FICA at 9.

¹⁰²15 U.S.C. 70 *et seq.*

narrower requirements, Deckers favored expanding the Rules' coverage to include faux-fur products. According to Deckers, doing so would "ensure that the consumer knows whether [he or she] is purchasing real or fake fur prior to making the purchase."¹⁰⁴

IV. Analysis

After considering the record, the Commission proposes the following amendments: updating the Name Guide while retaining "Asiatic Raccoon" as *nyctereutes procyonoides*' only name; providing more labeling flexibility; conforming the Rules with TFLA; and eliminating unnecessary provisions. The Commission does not propose changing the Rules' scope or continuing guaranty provisions.

A. Name Guide

This section first discusses why the Commission is retaining the name "Asiatic Raccoon." It then explains why it will not add "Finnraccoon" to the Name Guide. Finally, it discusses proposed amendments to update the Name Guide.

1. The Commission Does Not Propose Replacing "Asiatic Raccoon."

¹⁰³15 U.S.C. 70j. FICA also cited the Textile Act's legislative history regarding its coverage. FICA at 9, n. 18.

¹⁰⁴Deckers at 2. In addition to proposing amendments, some commenters submitted more general views. FICA requested a process for obtaining "interpretations from the Commission" regarding technical requirements and complying with overlapping state and federal regulations. FICA at 10. The Commission's rules already provide such a mechanism. *See* 16 CFR 1.1 through 1.4 (procedure for requesting advisory opinions). Deckers asked for clarification that the Rules do not apply to advertisements not linked to point of sale. Deckers at 7-8. Section 301.38(c) makes clear that the requirements do not apply to advertisements "not intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of any specific fur products or furs." 16 CFR 301.38(c). Finally, several individual commenters voiced support for requiring fur disclosures generally. *See, e.g.,* Karol comment at 1.

The Fur Act requires the Name Guide to prescribe “the true English names for the animals in question, or in the absence of a true English name for an animal, the name by which such animal can be properly identified in the United States.”¹⁰⁵ In 1961, the Commission applied that standard and determined that “Asiatic Raccoon” was the appropriate name for *nyctereutes procyonoides*.¹⁰⁶ Here, the record confirms that “Asiatic Raccoon” continues to be appropriate for two reasons. First, it describes the animal in a way that consumers in the United States can properly identify it. Ms. Lynn from FWS explained that the word “Asiatic” “gives you an idea where the animal originated naturally.”¹⁰⁷ Critically, Ms. Lynn did not agree with HSUS that “Asiatic” is misleading. In fact, she described the term as “neutral.”¹⁰⁸ In addition, as FICA observed, *nyctereutes procyonoides* has a raccoon-like fur pattern around its eyes. Indeed, Dr. Nolfo-Clements’ letter supporting HSUS’s comment acknowledged that the animal “superficially resembles the raccoons . . . that are native to the Americas.”¹⁰⁹

Second, the record indicates that consumers likely have become familiar with the name “Asiatic Raccoon” through fur labels. Based on its own investigations, HSUS noted that “Asiatic Raccoon” appears on fur labels “fairly often.”¹¹⁰ Consistent with that statement, FICA and Finnish Fur explained that products using *nyctereutes procyonoides* as trim usually did not meet

¹⁰⁵15 U.S.C. 69e(a).

¹⁰⁶26 FR 10446 (Nov. 4, 1961).

¹⁰⁷Tr. at 38, ln. 22-23.

¹⁰⁸Tr. at 39, ln. 6, 11-12.

¹⁰⁹HSUS at 14 (attached letter of Dr. Lauren Nolfo-Clements).

¹¹⁰Tr. at 79, ln. 2.

the now-defunct *de minimis* exemption, and therefore would have been labeled as “Asiatic Raccoon.”¹¹¹ Because “Asiatic Raccoon” is the name that consumers have used to identify the animal since 1961, consumers likely understand this term. In addition, if the term confused or otherwise harmed consumers, evidence of such confusion should exist. The record, however, does not contain any such evidence.

Furthermore, HSUS’s arguments against “Asiatic Raccoon” are not persuasive. The Commission does not agree that it should defer to ITIS in this instance. FWS and USGS representatives, including an ITIS-cited expert, agreed that ITIS is not intended as a source for common names.¹¹² Furthermore, scientific consensus is not the best measure of an animal’s true English name or the name by which American consumers identify it. Scientists develop taxonomic schemes like ITIS for many purposes, but assisting with purchasing decisions is not one of them. The Commission likewise does not find dispositive the use of “Raccoon Dog” in literature predating the Name Guide.¹¹³ Rather, the more relevant consideration is consumers’ current familiarity with the term, based on more than 50 years of use. Finally, the Commission does not find “Asiatic Raccoon” misleading, even though some of those animals are raised in

¹¹¹Tr. at 79, ln. 14-16.

¹¹²HSUS suggested that ITIS could serve as a consumer resource for information about the animal, but comments at the hearing indicated that consumers would not be familiar with ITIS. To the extent consumers would be inclined to research the term “Asiatic Raccoon” online, a google.com search performed on June 20, 2012, for example, shows that the first 17 results related to *nyctereutes procyonoides*.

¹¹³HSUS’s repeated references to “Asiatic Raccoon” as a “trade name” appear to be based on speculation. Tr. at 63, ln. 13-16 (HSUS representative explaining the basis for the “trade name” assertion as “[t]he fact that [‘Asiatic Raccoon’] isn’t listed anywhere reputable or scientific as being an accepted common name, [means that] I have to assume that some interest pushed it onto the list at some point”).

Europe. As discussed above, “Asiatic” refers, accurately, to the animal’s native habitat. For consumers interested in where the fur originated, the labels separately provide that information.

Moreover, other names suggested by commenters have significant problems. “Raccoon Dog” could significantly mislead consumers about the animal’s relationship to domestic dog. Specifically, industry commenters reported that two major department stores had stopped carrying items with such fur because consumers confused it with domestic dog.¹¹⁴ The suggested names “Tanuki” and “Magnut” are foreign words and are not names by which the animal can be identified in the United States as required by the Act. Although Dr. Gardner of the Smithsonian gave some support to “Tanuki,” HSUS reported that the term is not prevalent in the United States. Furthermore, there is no evidence establishing that consumers understand the term. No comments supported changing the name to “Magnut.”

2. The Commission Does Not Propose Allowing “Finnraccoon.”

The current Name Guide specifies “Asiatic Raccoon” as the sole name for *nyctereutes procyonoides*. Two commenters suggested the Name Guide list “Finnraccoon” as an alternative to “Asiatic Raccoon” for Finnish-farmed *nyctereutes procyonoides*. They argued that “Finnraccoon” would help consumers differentiate between *nyctereutes procyonoides* raised according to stricter European regulatory standards and those raised in Asia. As discussed above, the Fur Act requires Name Guide names to be the animal’s “true English name” or a name by which the animal can be identified in the United States. The record indicates that

¹¹⁴As discussed in section III.A.1.b, *supra*, the record indicates that *nyctereutes procyonoides* differs significantly from domestic dog.

“Finnraccoon” satisfies neither criteria. Thus, the Commission declines to propose it as an alternative name.

Despite some use of the term in marketing, there is no evidence that consumers understand that “Finnraccoon” is *nyctereutes procyonoides* and that it is the same animal currently labeled as “Asiatic Raccoon.” In addition, the commenters’ basis for the alternate name depends on purportedly superior European fur-farming practices, which can change and which the Commission cannot verify. In any event, the country of origin disclosure will alert consumers that the animal was raised in Europe. Accordingly, the Commission does not propose adding “Finnraccoon” to the Name Guide.¹¹⁵

3. Proposed Name Guide Updates

Commenters made several suggestions for revising other Name Guide entries. HSUS and FICA pointed to several entries that appeared to reference the wrong species or contained typographical errors. In addition, HSUS suggested that the Name Guide provide a different common name for each species of fur-bearing animal. Finally, FICA requested removal of prohibited species, and Deckers requested “sheepskin” as a new name.

In light of the record, the Commission proposes updating the Name Guide to correct typographical errors and species misidentification. The Commission has not updated the Name Guide since 1967, and the taxonomic classifications for some animals have changed.

¹¹⁵As an alternative to amending the Name Guide, FICA proposed an additional regulation allowing the name “Finnraccoon,” as the Rules allow for certain types of lamb fur. FICA at 5. However, those regulations require the fur to have certain characteristics affecting its appearance as wearing apparel. *See, e.g.*, 16 CFR 301.9(a) (allowing term “Mouton Lamb” for fur that has been “straightened, chemically treated, and thermally set to produce a moisture repellent finish”). There is no evidence that “Finnraccoon” fur significantly differs in characteristics from other Asiatic Raccoon fur.

Accordingly, the Commission proposes several corrections, such as changing the scientific name for “Ocelot” from *felis pardalis* to *leopardus pardalis*. The following chart lists the amended Name Guide entries, with the new text in bold. Notably, the amended entries correct a misspelling of *nyctereutes procyonoides*.¹¹⁶

Name	Order	Family	Genus-Species
Alpaca	Artiodactyla	Camelidae	Lama pacos.
Antelope	Ungulata	Bovidae	Hippotragus niger and Antilope cervicapra.
Bear, Polar .....	.....do .....	.....do	Ursus maritimus.
Calf	Artiodactyla	Bovidae	Bos taurus.
Cat, Leopard ...	.....do .....	.....do	Prionailurus bengalensis.
Cat, Lynx .....	.....do .....	.....do	Lynx rufus.
Cat, Margay .....	.....do .....	.....do	Leopardus wiedii.
Chipmunk .....	.....do	Sciuridae	Tamias sp.
Civet	Carnivora	Viverridae	Viverra sp., Viverricula sp., Paradoxurus sp., and Paguma sp.
Desman	Soricomorpha	Talpidae	Desmana moschata and Galemys pyrenaicus.
Fox .....	.....do	Canidae	Vulpes vulpes, Vulpes macrotis.
Fox, Blue .....	.....do .....	.....do	Vulpes lagopus.

¹¹⁶Because commenters did not provide any evidence substantiating what they described as errors, the Commission proposes corrections only for errors it has independently verified with the assistance of FWS. In addition, the Commission declines to change the genus-species listing for “dog” from “canis familiaris” to “canis lupus familiaris” because doing so would conflict with the Dog and Cat Protection Act’s definition of “dog fur.” See 19 U.S.C. 1308(a)(5) (defining “dog fur” as “the pelt or skin of any animal of the species *Canis familiaris*”).

Fox, White	Carnivora	Canidae	Vulpes lagopus.
Goat	Artiodactyla	Bovidae	Capra hircus.
Jaguar .....	.....do	Felidae	Panthera onca.
Jaguarundi .....	.....do .....	.....do	Puma yagouarouundi.
Kangaroo	Diprotodontia	Macropodidae	Marcopus sp.
Kangaroo-rat .....	.....do	Potoroidae	Bettongia sp.
Kid	Artiodactyla	Bovidae	Capra hircus.
Koala	Diprotodontia	Phascolarctidae	Phascolarctos cinereus.
Lamb	Artiodactyla	Bovidae	Ovis aries.
Leopard	Carnivora	Felidae	Panthera pardus.
Llama	Artiodactyla	Camelidae	Lama glama.
Marmot	Rodentia	Sciuridae	Marmota bobak.
Mole	Soricomorpha	Talpidae	Talpa sp.
Monkey	Primates	Cercopithecidae	Colobus polykomos.
Nutria .....	.....do	Myocastoridae ..	Myocastor coypus.
Ocelot	Carnivora	Felidae	Leopardus pardalis
Opossum	Didelphimorphia	Didelphidae	Didelphis sp.
Opossum, Australian	Diprotodontia	Phalangeridae	Trichosurus vulpecula.
Opossum, Ringtail .....	.....do	Pseudocheiridae	Pseudocheirus sp.
Opossum, South American	Didelphimorphia	Didelphidae	Lutreolina crassicaudata.
Otter	Carnivora	Mustelidae	Lontra canadensis, Pteronura brasiliensis, and Lutra lutra.
Panda	Carnivora	Ailuridae	Ailurus fulgens.
Pony	Perissodactyla	Equidae	Equus caballus.

Rabbit	Lagomorpha	Leporidae	Oryctolagus cuniculus.
Raccoon, Asiatic	.....do	Canidae	Nyctereutes procyonoides.
Raccoon, Mexican .....	.....do	Procyonidae	Nasua sp.
Reindeer	Artiodactyla	Cervidae	Rangifer tarandus.
Seal, Fur	Carnivora	Otariidae	Callorhinus ursinus.
Sheep	Artiodactyla	Bovidae	Ovis aries.
Skunk	Carnivora	Mephitidae	Mephitis mephitis, Mephitis macroura, Conepatus semistriatus and Conepatus sp.
Vicuna	Artiodactyla	Camelidae	Vicugna vicugna.
Viscacha	Rodentia	Chinchillidae	Lagidium sp.
Wallaby	Diprotodontia	Macropodidae	Wallabia sp., Petrogale sp., and Thylogale sp.
Weasel, Manchurian	Carnivora	Mustelidae.....	Mustela altaica and Mustela nivalis rixosa.
Wolf .....	.....do	Canidae	Canis lupus.
Wolverine .....	.....do	Mustelidae	Gulo gulo.
Wombat	Diprotodontia	Vombatidae	Vombatus sp.

The Commission does not propose separate names for each species because doing so would add significant burdens without providing any apparent consumer benefits. Requiring different names for each fur-bearing species, such as the 25 species of chipmunk suggested by HSUS, would require entities to create many additional labels for products. Against this burden, HSUS did not provide any evidence of ongoing consumer harm from the current practice of grouping similar animals under one common name. Although HSUS stated at the hearing that consumers might want to know about particular species because of varying levels of endangerment or treatment, it did not identify evidence that a significant number of consumers

valued that information. Moreover, the record does not demonstrate that such information would influence consumers' purchasing decisions.

The Commission also declines to propose removing “dog,” “cat,” or other names of prohibited species because, as HSUS and AAW explained, leaving these names provides another means of enforcing the Rules as to those furs. Specifically, retaining the names of prohibited species in the Name Guide helps to ensure that mislabeling and falsely advertising dog, cat, and other prohibited species remain Fur Rules violations.

Finally, the Commission does not propose amendments to allow “sheepskin” or “lambskin,” as requested by Deckers. The Fur Act limits Name Guide names to the common name of “animals,” not products,¹¹⁷ and “sheepskin” and “lambskin” refer to products.

B. Labeling Amendments

Several commenters objected to the Rules' labeling requirements as unnecessarily complex and inconsistent with the Commission's textile labeling requirements. These commenters argued that such specifications impose significant costs on consumers and businesses without corresponding benefits to consumers. They also posited that the elimination of the *de minimis* exemption has substantially increased these costs. Thus, commenters made several suggestions for reducing the required information and labeling specifications. As explained below, the Commission agrees with most of these suggestions and, therefore, proposes several amendments to: (1) reduce the amount of required information; and (2) provide more labeling flexibility.

1. Required Information

¹¹⁷15 U.S.C. 69e(a).

As discussed above, fur labels must disclose pointed, dyed, bleached, or artificially colored fur and fur consisting of, among other things, “sides” or “flanks.”¹¹⁸ In light of the uncontroverted evidence that the “sides” and “flanks” disclosures either provide information already disclosed or do not provide consumers with meaningful information, the Commission proposes eliminating § 301.20(a)’s disclosure requirement.

The Commission declines, however, to further limit the required disclosures. The Commission cannot amend the Rules to eliminate disclosures of bleached, dyed, or artificially colored fur because the Fur Act requires them.¹¹⁹ In addition, Deckers has not provided evidence establishing that disclosures of pointed fur fail to benefit consumers. Moreover, FICA and FDRA likewise failed to present any evidence showing consumers’ lack of interest in the disclosures for items with small amounts of fur. In any event, the proposed amendments detailed below will provide additional flexibility. Furthermore, fur-trim product labels only need to disclose “paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur” if fur from those parts makes up at least ten percent of the product.¹²⁰

2. Label Specifications

Commenters requested several changes to the Rules’ labeling specifications, including elimination of requirements that the labels be a certain size; that disclosures be of a certain font

¹¹⁸16 CFR 301.19; 301.20.

¹¹⁹15 U.S.C. 69b(2)(C).

¹²⁰16 CFR 301.20. FDRA also requested that the Commission not require a fur origin disclosure for shoes because the disclosure is, in most instances, redundant. FDRA comment. However, FDRA did not explain why such a disclosure is redundant, particularly considering that the Textile Act, which requires country of origin disclosure, does not apply to shoes. 15 U.S.C. 70j(a)(10).

size, in a set order, and limited to FTC-required information on the front; and that items sold in pairs must be physically attached to each other to have only one label. The Commission agrees with these comments. In its experience enforcing the Textile Rules, the Commission has found it effective to require that disclosures be “clearly legible, conspicuous, and readily accessible to the prospective purchaser.”¹²¹ Accordingly, the Commission proposes amendments to provide more flexibility regarding label size, text, and use for items sold in pairs or groups.

a. Deleting Label Size Requirements

The Rules currently require that labels measure 1.75 inches by 2.75 inches.¹²² The Commission agrees that this size is impractical for smaller items, a consideration that carries greater significance now that TFLA has eliminated the *de minimis* exemptions. Furthermore, the Commission’s textile labeling enforcement experience demonstrates that specifying exact label dimensions is unnecessary to inform consumers about wearing apparel, so long as the required disclosures are conspicuous. Therefore, the Commission proposes eliminating the size requirement. Consistent with the Textile Rules,¹²³ the proposed new § 301.27 would require labels to be “conspicuous and of such durability as to remain attached to the product throughout any distribution, sale or resale, and until sold and delivered to the ultimate consumer.”

b. Deleting Label Text Requirements

¹²¹16 CFR 303.16(b).

¹²²16 CFR 301.27. Commenters NRF and FDRA asserted that § 301.27 requires a sewn-in label. The Commission does not agree with this reading because, unlike a textile care label, that section requires only that the label remain affixed until it reaches the consumer. Nevertheless, the Commission’s proposed revision to § 301.27 makes clear that labels need not be sewn-in.

¹²³16 CFR 303.15(a).

Section 301.29 requires label text to be 12-point or “pica” font size. It also prohibits non-FTC information on the front of the label, while § 301.30 prescribes a specific order for disclosures. The Commission agrees that these requirements create substantial burdens, such as forcing marketers to use multiple labels to comply with FTC, state, and international fur regulations. Furthermore, the Commission finds that, based on its experience enforcing the Textile Rules, these requirements are unnecessary to disclose relevant information effectively. Accordingly, the Commission proposes:

- replacing § 301.29(a)’s 12-point or “pica” type font-size requirement with a requirement to disclose information “in such a manner as to be clearly legible, conspicuous, and readily accessible to the prospective purchaser”;
- removing § 301.29(a)’s limits on information appearing on the front of the label, thereby allowing entities to include true and non-deceptive information on either side; and
- deleting § 301.30, which specifies a particular order for FTC disclosures.

These proposed amendments should give marketers needed flexibility to convey effective disclosures without imposing unnecessary burdens.¹²⁴

c. Revising Requirements for Labels for Items Sold in Pairs or Groups

Section 301.31 requires that items “manufactured for use in pairs or groups” be “firmly attached to each other when marketed and delivered in the channels of trade and to the

¹²⁴Allowing different information to appear on fur labels should prevent the redundant disclosures noted by Deckers, FDRA, and Zelman.

purchaser.”¹²⁵ Commenters explained that this requirement interferes with marketing smaller items like shoes and gloves, which are typically sold in pairs. Furthermore, there is no apparent benefit, and likely some inconvenience, to consumers from requiring actual attachment of items through the point of sale. To address this issue, the Commission proposes eliminating the requirement and incorporating the Textile Rules’ provision allowing a single label for items “marketed or handled in pairs or ensembles,” regardless of whether they are attached at the point-of-sale.¹²⁶ Thus, if the items are sold as pairs or ensembles and each item contains the same fur with the same country of origin, retailers can use a single label for all items.

C. Amendments Required by TFLA

TFLA’s amendments require conforming changes to the Fur Rules. Accordingly, the Commission proposes replacing the *de minimis* exemption (§ 301.39), as well as all related provisions,¹²⁷ with TFLA’s hunter/trapper exemption.

D. Proposed Amendments Eliminating Unnecessary Provisions

The Commission also proposes eliminating three sections to simplify the Rules. First, it proposes eliminating § 301.19(l)(1) through (7). These subsections provide a suggested, but not

¹²⁵16 CFR 301.31(b).

¹²⁶16 CFR 303.29(b).

¹²⁷Because TFLA eliminated the *de minimis* exemption, it also eliminated the provision that excepted dog and cat fur from that exemption (*i.e.*, a savings clause to require labeling of all dog and cat fur). Accordingly, the Commission proposes deleting the Rules’ definitions of “cat fur,” “dog fur,” and “dog or cat fur products,” as well as the Rules’ cat and dog fur exceptions in § 301.39(a), because those terms are used only in the *de minimis* exemption provision. As discussed above, the Name Guide will continue to list “dog” and “cat” as required names. Similarly, the Commission proposes several non-substantive amendments to ensure that references to other provisions and the Act are accurate and to correct typographical errors.

required, method for determining whether a fur has been treated with iron or copper and, therefore, requires a “color altered” or “color added” disclosure. The suggestion appears unnecessary because Section 301.19 requires that an entity coloring furs must disclose the treatment on an invoice.¹²⁸

Second, the Commission proposes deleting § 301.28, which provides further guidance on attaching labels. Because the proposed new § 301.27 clarifies the method for attaching labels, § 301.28 is now redundant.

Third, § 301.40 requires entities to assign an “item number or mark” to furs and to disclose it on invoices and labels.¹²⁹ In the Commission’s experience, it does not need this information to enforce the Fur Act and Rules. Furthermore, it does not provide any meaningful information to consumers. Therefore, the Commission proposes eliminating this provision and the internal references to it.

E. Retaining the Rules’ Continuing Guaranty Provisions and Product Coverage

HSUS urged the Commission to require guarantors to designate specific fur products guaranteed, “as is required of separate guarantees [sic].”¹³⁰ HSUS’s proposal, however, conflicts with the Fur Act. Specifically, the Act provides that continuing guaranties will apply “to *any fur product* or fur handled by a guarantor.”¹³¹ The Act provides no limitation on the fur products

¹²⁸16 CFR 301.19(h).

¹²⁹16 CFR 301.40(a).

¹³⁰HSUS at 10.

¹³¹15 U.S.C. 69h(a)(2) (emphasis added).

covered by continuing guaranties. Thus, the Act requires the Commission's current provisions allowing a continuing guaranty to cover all fur products handled by the guarantor.

In addition, Deckers asked the Commission to expand the Rules' scope to cover fake fur products, while FICA requested narrowing it to exclude items like shoes and handbags. The Commission declines to do either. The Commission cannot expand the coverage to include faux fur because the Fur Act applies only to "furs" or "fur products," which are defined as "animal skin . . . with hair, fleece, or fur fibers attached thereto" and "wearing apparel" made of or containing "fur or used fur," respectively.¹³² Faux fur is not such an item. Likewise, FICA's complaints do not justify reducing the Rules' coverage. As an initial matter, handbags are already excluded because the Fur Act's labeling provisions apply to wearing apparel, which the Rules define as "clothing or covering for any part of the body."¹³³ In addition, the proposed amendments give ample flexibility to place smaller, more practical labels on small items. Thus, there is no need to reduce the Rules' scope and deny consumers useful information.¹³⁴

V. Request for Comment

Interested parties are invited to submit comments online or on paper. For the Commission to consider your comment, we must receive it on or before November 16, 2012. Write "Fur Rules Review, Matter No. P074201" on your comment. Your comment – including

¹³²15 U.S.C. 69(b) and (d).

¹³³16 CFR 301.1(b).

¹³⁴FICA noted that textile labeling requirements do not apply to shoes and, therefore, the Textile Rules and the Fur Rules treat those items inconsistently. FICA at 9. However, the Textile Act specifically exempts shoes. 15 U.S.C. 70j(a)(10). The Fur Act, by contrast, does not contain a shoe exemption.

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, 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 making sure that your comment does not include any sensitive health information, such as medical records or other individually-identifiable health information, such as medical records or other individually-identifiable health information. In addition, do not include any "trade 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, 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 your comment confidential treatment, 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).¹³⁵ Your comment will be kept confidential only if

¹³⁵In 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).

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. Accordingly, 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/furrulesreviewnprm> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov>, you may also file a comment through that website.

If you file your comment on paper, write "Fur Rules Review, Matter No. P074201" 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 O), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission website at <http://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 Commission will consider all timely and responsive public comments that it receives on or before November 16, 2012. 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.shtm>.

VI. Paperwork Reduction Act

The proposed amendments do not constitute a "collection of information" under the Paperwork Reduction Act (44 U.S.C. 3501-3521). The labeling amendments provide greater

flexibility and, as such, potentially reduce disclosure burdens. The changes to the Name Guide simply alter the required, but Government-supplied information on some labels.¹³⁶ Deleting the *de minimis* exemption will increase burden for some entities to the extent they will have to make disclosures regarding previously exempt products, but this has already been accounted for in the Commission's most recently approved clearance request and burden estimates for the Fur Rule.¹³⁷

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act¹³⁸ requires an agency to provide an Initial Regulatory Flexibility Analysis with a proposed rule unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.¹³⁹ As part of the Commission's recent PRA clearance request, the Commission estimated that 1,230 retailers, 90 manufacturers, and 1,200 importers are subject to the Rules.¹⁴⁰ The Commission further estimated that these entities incur a total recordkeeping burden of 51,870 hours and a total disclosure burden of 116,228 hours.¹⁴¹ The entities subject to these burdens will be classified as small businesses if they satisfy the Small Business Administration's relevant size standards, as

¹³⁶According to OMB, "[t]he public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not included" within in the definition of a PRA "collection of information." 5 CFR 1320.3(c)(2).

¹³⁷OMB Control No. 3084-0099 (clearance granted April 3, 2012, through April 30, 2015).

¹³⁸5 U.S.C. 601-612

¹³⁹*See* 5 U.S.C. 603-605.

¹⁴⁰77 FR 10744, 10745 (Feb. 23, 2012).

¹⁴¹*Id.*

determined by the Small Business Size Standards component of the North American Industry Classification System (“NAICS”).¹⁴² The relevant NAICS size standards, which are either minimum annual receipts or number of employees, are as follows:

NAICS Industry Title	Small Business Size Standard
Fur-Bearing Animal and Rabbit Production	\$750,000
Fur and Leather Apparel Manufacturing	500 employees
Men’s Clothing Stores	\$10,000,000
Women’s Clothing Stores	\$25,000,000
Department Stores	\$30,000,000

The Commission is unable to determine how many of the above-listed entities qualify as small businesses. Neither the record in this proceeding nor in the recent PRA clearance proceeding contains information regarding the size of entities subject to the Fur Rules. Moreover, the relevant NAICS categories include many entities that are not in the fur industry. Therefore, estimates of the percentage of small businesses in those categories would not necessarily reflect the percentage of small businesses subject to the Fur Rules in those categories. Accordingly, the Commission invites comments regarding the number of entities in each NAICS category that are subject to the Fur Rules, and revenue and employee data for those entities.

¹⁴²The standards are available at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

Even absent this data, however, the Commission does not expect that the proposed amendments will have a significant economic impact on small entities. As discussed above in Section VI, the amendments do not impose any new costs. The greater flexibility provided by the labeling amendments should reduce disclosure burdens, and the changes to the Name Guide simply alter the required information on some labels. Furthermore, businesses should not have to remove labels from existing fur products, which are mostly seasonal items, because they can continue to sell those products with old labels until the amendments' effective date.

This document serves as notice to the Small Business Administration of the agency's certification of no effect.

VIII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record.¹⁴³

List of Subjects in 16 CFR Part 301

Furs, Labeling, Trade practices.

For the reasons discussed in the preamble, the Federal Trade Commission is proposing to amend Title 16, Chapter I, Subchapter C, of the Code of Federal Regulations, part 301, as follows:

1. The authority citation for part 301 continues to read:

AUTHORITY: 15 U.S.C. 69 et seq.

2. Revise § 301.0 to read as follows:

§ 301.0 Fur products name guide.

¹⁴³See 16 CFR 1.26(b)(5).

Name	Order	Family	Genus-Species
Alpaca	Artiodactyla	Camelidae	Lama pacos.
Antelope	Ungulata	Bovidae	Hippotragus niger and Antilope cervicapra.
Badger	Carnivora	Mustelidae	Taxida sp. and Meles sp.
Bassarisk .....	.....do	Procyonidae	Bassariscus astutus.
Bear .....	.....do	Ursidae	Ursus sp.
Bear, Polar .....	.....do .....	.....do	Ursus maritimus.
Beaver	Rodentia	Castoridae	Castor canadensis.
Burunduk .....	.....do	Sciuridae	Eutamias asiaticus.
Calf	Artiodactyla	Bovidae	Bos taurus.
Cat, Caracal	Carnivora	Felidae	Caracal caracal.
Cat, Domestic ...	.....do .....	.....do	Felis catus.
Cat, Leopard .....	.....do .....	.....do	Prionailurus bengalensis.
Cat, Lynx .....	.....do .....	.....do	Lynx rufus.
Cat, Manul .....	.....do .....	.....do	Felis manul.
Cat, Margay .....	.....do .....	.....do	Leopardus wiedii.
Cat, Spotted .....	.....do .....	.....do	Felis sp. (South America).

Cat, Wild .....	.....do .....	.....do	Felis catus and Felis lybica.
Cheetah .....	.....do .....	.....do	Acinonyx jubatus.
Chinchilla	Rodentia	Chinchillidae	Chinchilla chinchilla.
Chipmunk .....	.....do	Sciuridae	Tamias sp.
Civet	Carnivora	Viverridae	Viverra sp., Viverricula sp., Paradoxurus sp., and Paguma sp.
Desman	Soricomorpha	Talpidae	Desmana moschata and Galemys pyrenaicus.
Dog	Carnivora	Canidae	Canis familiaris.
Ermine .....	.....do	Mustelidae	Mustela erminea.
Fisher .....	.....do .....	.....do	Martes pennanti.
Fitch .....	.....do .....	.....do	Mustela putorius.
Fox .....	.....do	Canidae	Vulpes vulpes, Vulpes macrotis.
Fox, Blue .....	.....do .....	.....do	Vulpes lagopus.
Fox, Grey .....	.....do .....	.....do	Urocyon cinereoargenteus and Urocyon littoralis.
Fox, Kit .....	.....do .....	.....do	Vulpes velox.
Fox, White	Carnivora	Canidae	Vulpes lagopus.
Genet .....	.....do	Viverridae	Genetta genetta.
Goat	Artiodactyla	Bovidae	Capra hircus.
Guanaco, or its young, the Guanaquito .....	.....do	Camelidae	Lama guanicoe.
Hamster	Rodentia	Cricetidae	Cricetus cricetus.
Hare .....	.....do	Leporidae	Lepus sp. and Lepus europaeus occidentalis.

Jackal	Carnivora	Canidae	Canis aureus and Canis adustus.
Jackal, Cape .....	.....do .....	.....do	Canis mesomelas.
Jaguar .....	.....do	Felidae	Panthera onca.
Jaguarundi .....	.....do .....	.....do	Puma yagouarundi.
Kangaroo	Diprotodontia	Macropodidae	Marcopus sp.
Kangaroo-rat .....	.....do	Potoroidae	Bettongia sp.
Kid	Artiodactyla	Bovidae	Capra hircus.
Kinkajou	Carnivora	Procyonidae	Potos flavus.
Koala	Diprotodontia	Phascolarctidae ..	Phascolarctos cinereus.
Lamb	Artiodactyla	Bovidae	Ovis aries.
Leopard	Carnivora	Felidae	Panthera pardus.
Llama	Artiodactyla	Camelidae	Lama glama.
Marmot	Rodentia	Sciuridae	Marmota bobak.
Marten, American	Carnivora	Mustelidae	Martes americana and Martes caurina.
Marten, Baum ...	.....do .....	.....do	Martes martes.
Marten, Japanese .....	.....do .....	.....do	Martes melampus.
Marten, Stone ...	.....do .....	.....do	Martes foina.
Mink .....	.....do .....	.....do	Mustela vison and Mustela lutreola.
Mole	Soricomorpha	Talpidae	Talpa sp.
Monkey	Primates	Cercopithecidae	Colobus polykomos.
Muskrat	Rodentia	Muridae	Ondatra zibethicus.
Nutria .....	.....do	Myocastoridae	Myocastor coypus.
Ocelot	Carnivora	Felidae	Leopardus pardalis
Opossum	Didelphimorphia ..	Didelphidae	Didelphis sp.

Opossum, Australian	Diprotodontia	Phalangeridae	Trichosurus vulpecula.
Opossum, Ringtail .....	.....do	Pseudocheiridae	Pseudocheirus sp.
Opossum, South American	Didelphimorphia ..	Didelphidae	Lutreolina crassicaudata.
Opossum, Water	.....do .....	.....do	Chironectes minimus.
Otter	Carnivora	Mustelidae	Lontra canadensis, Pteronura brasiliensis, and Lutra lutra.
Otter, Sea .....	.....do .....	.....do	Enhydra lutris.
Pahmi .....	.....do .....	.....do	Helictis moschata and Helictis personata.
Panda	Carnivora	Ailuridae	Ailurus fulgens.
Peschanik	Rodentia	Sciuridae	Citellus fulvus.
Pony	Perissodactyla	Equidae	Equus caballus.
Rabbit	Lagomorpha	Leporidae	Oryctolagus cuniculus.
Raccoon	Carnivora	Procyonidae	Procyon lotor and Procyon cancrivorus.
Raccoon, Asiatic	.....do	Canidae	Nyctereutes procyonoides.
Raccoon, Mexican .....	.....do	Procyonidae	Nasua sp.
Reindeer	Artiodactyla	Cervidae	Rangifer tarandus.
Sable	Carnivora	Mustelidae	Martes zibellina.
Sable, American	.....do .....	.....do	Martes americana and Martes caurina.
Seal, Fur	Carnivora	Otariidae	Callorhinus ursinus.
Seal, Hair .....	.....do	Phocidae	Phoca sp.
Seal, Roc .....	.....do	Otariidae	Otaria flavescens.
Sheep	Artiodactyla	Bovidae	Ovis aries.

Skunk	Carnivora	Mephitidae	Mephitis mephitis, Mephitis macroura, Conepatus semistriatus and Conepatus sp.
Skunk, Spotted ..	.....do .....	.....do	Spilogale sp.
Squirrel	Rodentia	Sciuridae	Sciurus vulgaris.
Squirrel, Flying	.....do .....	.....do	Eupetaurus cinereus, Pteromys volans and Petaurista leucogenys.
Susilk .....	.....do .....	.....do	Citellus citellus, Citellus rufescens and Citellus suslica.
Vicuna	Artiodactyla	Camelidae	Vicugna vicugna.
Viscacha	Rodentia	Chinchillidae	Lagidium sp.
Wallaby	Diprotodontia	Macropodidae	Wallabia sp., Petrogale sp., and Thylogale sp.
Weasel	Carnivora	Mustelidae	Mustela frenata.
Weasel, Chinese	.....do .....	.....do	Mustela sibirica.
Weasel, Japanese .....	.....do .....	.....do	Mustela itatsi (also classified as Mustela sibirica itatsi).
Weasel, Manchurian	Carnivora	Mustelidae	Mustela altaica and Mustela nivalis rixosa.
Wolf .....	.....do	Canidae	Canis lupus.
Wolverine .....	.....do	Mustelidae	Gulo gulo.
Wombat	Diprotodontia	Vombatidae	Vombatus sp.
Woodchuck	Rodentia	Sciuridae	Marmota monax.

3. Amend § 301.1 by removing paragraphs (a)(6), (a)(7) and (a)(8) and by revising paragraph (a)(4) to read as follows:

§ 301.1 Terms defined.

(a) * * *

(4) The terms *Fur Products Name Guide* and *Name Guide* mean the register of names of hair, fleece, and fur-bearing animals issued and amended by the Commission pursuant to the provisions of section 7 of the act.

* * * * *

4. Amend § 301.2, by revising paragraphs (b) and (c) to read as follows:

§ 301.2 General requirements.

* * * * *

(b) Each and every fur, except those exempted under § 301.39 of this part, shall be invoiced in conformity with the requirements of the act and rules and regulations.

(c) Any advertising of fur products or furs, except those exempted under §301.39 of this part, shall be in conformity with the requirements of the act and rules and regulations.

5. Amend § 301.19 by removing paragraphs (l)(1) through (l)(7).

6. Revise § 301.20 paragraph (a) to read as follows:

§ 301.20 Fur products composed of pieces.

(a) Where fur products, or fur mats and plates, are composed in whole or in substantial part of paws, tails, bellies, gills, ears, throats, heads, scrap pieces, or waste fur, such fact shall be disclosed as a part of the required information in labeling, invoicing, and advertising.

Where a fur product is made of the backs of skins, such fact may be set out in labels, invoices, and advertising.

* * * * *

7. Revise § 301.27 to read as follows:

§ 301.27 Labels and method of affixing.

At all times during the marketing of a fur product the required label shall be conspicuous and of such durability as to remain attached to the product throughout any distribution, sale, or resale, and until sold and delivered to the ultimate consumer.

8. Remove and reserve §§ 301.28, 301.30, and 301.40.

9. Revise § 301.29 paragraph (a) to read as follows:

§ 301.29 Requirements in respect to disclosure on label.

(a) The required information shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the prospective purchaser, and all parts of the required information shall be set out in letters of equal size and conspicuousness. All of the required information with respect to the fur product shall be set out on one side of the label. The label may include any nonrequired information which is true and non-deceptive and which is not prohibited by the act and regulations, but in all cases the animal name used shall be that set out in the Name Guide.

* * * * *

10. Revise § 301.31 paragraph (b) to read as follows:

§ 301.31 Labeling of fur products consisting of two or more units.

* * * * *

(b) In the case of fur products that are marketed or handled in pairs or ensembles, only one label is required if all units in the pair or group are of the same fur and have the same country of origin. The information set out on the label must be applicable to each unit and supply the information required under the act and rules and regulations.

11. Amend § 301.35, by revising paragraph (b) to read as follows:

§ 301.35 Substitution of labels.

* * * * *

(b) The original label may be used as a substitute label provided the name or registered number of the person making the substitution is inserted thereon without interfering with or obscuring in any manner other required information. In connection with such substitution the name or registered number as well as any record numbers appearing on the original label may be removed.

* * * * *

12. Revise § 301.39 to read as follows:

§ 301.39 Exempted fur products.

The requirements of the act and regulations in this part do not apply to fur products that consist of fur obtained from an animal through trapping or hunting and that are sold in a face-to-face transaction at a place such as a residence, craft fair, or other location used on a temporary or short-term basis, by the person who trapped or hunted the animal, where the revenue from the sale of apparel or fur products is not the primary source of income of such person.

13. Amend § 301.41 by removing paragraph (a)(7) and by revising paragraph (a)(4) to read as follows:

§ 301.41 Maintenance of Records

(a) * * *

(4) That the fur product is composed in whole or in substantial part of paws, tails, bellies, gills, ears, throats, heads, scrap pieces, or waste fur, when such is the fact;

* * * * *

By direction of the Commission.

Donald S. Clark
Secretary.

Publication Date: 09/17/2012]

[FR Doc. 2012-22568 Filed 09/14/2012 at 8:45 am;