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FEDERAL TRADE COMMISSION

16 CFR Parts 500 and 502

RIN: 3084-AB33

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: Notice of proposed rulemaking; request for public comment.

SUMMARY: Based on comments received in response to its Advance Notice of Proposed Rulemaking (“ANPR”), the Commission proposes amending the rules and regulations promulgated under the Fair Packaging and Labeling Act (“Rules”) to modernize the place-of-business listing requirement; incorporate a more comprehensive metric chart; address the use of exponents with customary inch/pound measurements; delete outdated prohibitions on retail price sales representations; and acknowledge the role of the weights-and-measures laws of individual states. The Commission seeks comment on these proposals.

DATES: Written comments must be received on or before March 30, 2015.

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/fplanprm> by following the instructions on the web-based form. If you prefer to 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 your comment to the following address: Federal Trade Commission,

Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex G), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex G), Washington, DC 20024.

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. Introduction

The Fair Packaging and Labeling Act, 15 U.S.C. 1451 *et seq.*, was enacted in 1966 to enable consumers to obtain accurate package quantity information to facilitate value comparisons and prevent unfair or deceptive packaging and labeling of “consumer commodities.”¹ The Rules generally concern products consumed during household use. However, several categories of these products are exempt from FTC regulations under the FPLA.² Moreover, the FTC has excluded certain other items from the Rules.³

¹ Consumer commodities are any food, device, or cosmetic, and any other article, product, or commodity that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption 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. 15 U.S.C. 1459(a). The Food and Drug Administration administers the FPLA with respect to food, drugs, cosmetics, and medical devices. 15 U.S.C. 1454(a); 15 U.S.C. 1456(a).

² 15 U.S.C. 1459(a)(1) through (5) (excluding, among other products, specified categories of meat, poultry, tobacco, insecticide, fungicide, drug, alcohol, and seed products).

³ 16 CFR 503.2, 503.5. Many products outside the scope of the FPLA and the Rules 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

Section 1453 of the Act 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 conspicuous type and position so that identity is easy to read and understand;⁴ (b) the name and place of business of the product’s manufacturer, packer, or distributor;⁵ 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.⁶ The Rules detail how units of weight or mass and measure must be stated, and require use of both U.S. (*e.g.*, pounds, feet, and gallons) and metric measures.⁷ The Rules also require net quantity disclosures for packages containing more than one product or unit, including: (a) “multi-unit packages”;⁸ (b) “variety packages”;⁹ and (c) “combination packages.”¹⁰

areas of legal metrology and engine fuel quality (2015 ed.) (compilation of state and federal laws and regulations pertaining to product labeling and packaging).

⁴ 16 CFR 500.4.

⁵ 16 CFR 500.5.

⁶ 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).

⁷ The FPLA was amended in 1992 to require use of metric measurements, in addition to customary inch/pound measures. Pub. L. 102-245 (February 14, 1992); Pub. L. 102-329 (August 3, 1992). In 1994, the FTC modified its regulations accordingly. 59 FR 1862 at 1872 (Jan. 12, 1994).

⁸ 16 CFR 500.27.

⁹ 16 CFR 500.28.

¹⁰ 16 CFR 500.29.

In addition, the Act grants the FTC authority to issue rules to prevent consumer deception and facilitate value comparisons.¹¹ The FTC has used this authority to address three types of representations: “cents-off,”¹² “introductory offer,”¹³ and “economy size.”¹⁴

To address these provisions as well as the rest of the Rules, the Commission, as part of its ongoing regulatory review program, published an ANPR in March 2014 seeking comment on the economic impact of, and the continuing need for, the Rules; the benefits of the Rules to consumers; and any burdens the Rules place on businesses.¹⁵

In response, the Commission received a number of comments. This Notice of Proposed Rulemaking (“NPRM”) summarizes those comments, explains the Commission’s decision to retain the Rules, proposes several amendments, and explains why the Commission has declined to propose certain amendments advocated by some commenters. This NPRM also sets forth the

¹¹ 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).

¹² A cents-off representation is one in which “cents-off” or a similar term is used to indicate that the consumer commodity is being offered for sale at a price lower than the ordinary and customary retail price. 16 CFR 502.100.

¹³ An introductory offer is one in which “introductory offer” or a similar phrase is used to indicate that the consumer commodity is being offered for sale at a price lower than the ordinary and customary retail price. 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).

¹⁴ An economy size representation is one in which “economy size” or similar phrase is used to indicate that the consumer commodity has a retail sale price advantage due to the size of that package or the quantity of its contents. 16 CFR 502.102.

¹⁵ 79 FR 15272 (March 19, 2014).

Commission's proposed amendments to the Rules.

II. Summary of Comments

The Commission received 15 comments¹⁶ in response to the ANPR from a diverse set of commenters: individuals;¹⁷ a consumer products manufacturer;¹⁸ an association promoting use of the metric system;¹⁹ professional associations representing officials, engineers, and industries affected by the Rules;²⁰ and a Nigerian police assistance organization.²¹ The comments expressed general support for the Rules but recommended that the Commission modify or clarify certain aspects of them. A number of comments raised issues associated with metric measurements and voiced support for a metric-only system.²² One comment made semantic and

¹⁶ The comments are posted at <http://www.ftc.gov/policy/public-comments/initiative-554>. The Commission has assigned each comment a number appearing after the name of the commenter and the date of submission. This notice cites comments using the last name of the individual submitter or the name of the organization, followed by the number assigned by the Commission.

¹⁷ Schlesinger (12), Steele (11), Mechtly (9), Mechtly (10), Dunn (14), Lewis (15), Vlietstra (13), Nichols (2), Bushnell (7), Sarich (8). The two Mechtly comments are identical.

¹⁸ Beaumont Products, Inc. ("Beaumont") (6).

¹⁹ U.S. Metric Association ("US Metric") (3).

²⁰ Packaging and Labeling Subcommittee of the National Conference on Weights and Measures ("NCWM") (1), Standards Coordinating Committee of the Institute of Electrical and Electronics Engineers ("IEEE") (4).

²¹ Police Assistance Committee of Nigeria (5).

²² NCWM (1), IEEE (4), Nichols (2), US Metric (3), Schlesinger (12), Vlietstra (13), Mechtly (9), Steele (11).

punctuation points, and addressed numeric nomenclature.²³ That commenter also considered the continued utility of requiring labels to list street addresses since the advent of Internet directories.²⁴ Three comments addressed aspects of net quantity statements.²⁵ The NCWM comment suggested deletion of regulations governing quantity or value claims in certain circumstances because they are no longer used in the marketplace. That comment also recommended an expanded definition of “consumer commodity,” as well as expanded regulations for slack-fill. This comment additionally requested more explicit recognition of state labeling laws. Finally, two comments addressed the lack of uniformity in labeling laws, domestically and internationally (*e.g.*, language differences and different products falling under Department of Agriculture labeling requirements).²⁶

III. Retention of the Rules

As part of the Commission’s systematic regulatory review, the ANPR asked whether there is a continuing need for the Rules and requested comment about the Rules’ benefits and costs. In response, commenters expressed wide support for the Rules; no commenter suggested they be repealed.²⁷ The record provides no evidence that the Rules impose excessive costs on industry, including small businesses, or that the disclosures required by the Rules are immaterial to consumers. Therefore, the Commission proposes retaining the Rules, but with certain

²³ NCWM (1).

²⁴ NCWM (1).

²⁵ NCWM (1), Steele (11), Beaumont (6).

²⁶ NCWM (1), Steele (11).

²⁷ *See, e.g.*, NCWM (1), Steele (11).

amendments suggested by various comments.

IV. Proposed Amendments

Based on the record and the Commission's experience, the Commission proposes several amendments as explained below. The Commission also explains why it declines to propose several other amendments.

A. Modernize the Place-of-Business Listing Requirement

The Commission proposes to amend the Rules' place-of-business listing requirement. Currently, the Rules require a label to conspicuously state the name and place of business of the manufacturer, packer, or distributor and further specify that the place of business statement contain the street address, city, state, and ZIP code. The street address, however, may be omitted if it is listed in a current city or telephone directory.²⁸ The NCWM comment suggested that this exception be extended to Internet directories, explaining that they serve the same purpose as printed telephone directories. The Commission agrees. It, therefore, proposes to revise this exception to permit a business to omit the street address if it is listed in any readily accessible, well-known, widely published, and publicly available resource, including but not limited to a printed directory, electronic database, or website. The inclusion of "any readily accessible, widely published, and publicly available resource" in the exception is flexible and intended to encompass new technologies that meet these requirements.

B. Incorporate a More Comprehensive Metric Chart

The NCWM comment noted that Section 500.19(a) currently contains an incomplete metric conversion chart that fails to list other possible, albeit uncommon, conversion factors that

²⁸ 16 CFR 500.5(a) through (e). The Act itself requires the label to include the place of business, but does not specify to what level of detail. 15 U.S.C. 1453(a)(1).

a packager might use, such as weight expressed in grain, or length expressed in rods. The Commission proposes to correct this omission by deleting the current chart and incorporating by reference the complete metric conversion chart published in National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality (2015 ed., p. 95). Members of the public can access the Handbook online at NIST's website, NIST.gov.

C. Address the Use of Exponents with Customary Inch/Pound Measurements

NCWM noted that, in the current rule (section 500.22), exponents are not listed for customary inch/pound measurements, but are included in the metric examples listed in Section 500.23(b) (*e.g.*, cubic centimeter – cm³). Because exponents are not listed in the customary inch/pound measurements, NCWM argued that affected businesses may think they are not permitted. It further asserted that use of exponents with both metric and customary inch/pound units is common in the marketplace. Moreover, the Office of Weights and Measures of the National Institute of Standards and Technology, U.S. Department of Commerce, which is authorized to promote uniformity in labeling regulation, has historically sanctioned exponent use with customary inch/pound units.²⁹ Therefore, the Commission now proposes to clarify the Rules to expressly permit exponents with customary inch/pound measurements (*e.g.*, cubic inches – in³).

D. Delete Prohibitions on Certain Retail Price Sales Representations

The Commission proposes to eliminate sections addressing when and how a packager or

²⁹ NCWM (1).

labeler represents a commodity to be “cents off,” an “introductory offer,” or “economy size.”³⁰ The Commission originally promulgated these provisions to curtail certain price representations that were commonly used in a deceptive manner during the 1960s and 1970s. However, these representations are now rarely seen in the modern marketplace. Indeed, they have been absent for some time.³¹ Should they re-appear, the Commission has other tools at its disposal to ensure they are not used deceptively.

E. Acknowledge the Role of Weights-and-Measures Laws of Individual States

NCWM reported that businesses look to the Rules but often neglect state regulations. Many products outside the Commission’s FPLA purview fall within the purview of those laws. NCWM asserted that amending the Rules to acknowledge the state role would aid compliance efforts by alerting businesses that state laws may apply. Therefore, the Commission proposes to amend the Rules to state “[m]any products exempted through proceedings under section 5(b) of the Act and section 500.3(e) of this chapter or excluded under part 503 of this chapter nonetheless fall within the purview of the weights-and-measures laws of individual states.”

V. Other Amendments the Commission Declines to Propose

Several comments urged the Commission to revise the Rules to: (1) Prohibit certain net quantity comparisons; (2) permit metric-only labels; (3) change “customary inch/pound” terminology; (4) prohibit periods and plurals in customary inch/pound abbreviations; (5) expand the definition of consumer commodity and rules governing non-functional slack-fill; (6) permit icons for items sold by numeric count; and (7) harmonize labeling regulations throughout the

³⁰ 15 U.S.C. 1454(c)(2).

³¹ In 1997, the U.S. Food and Drug Administration revoked similar regulations for “cents off” and economy size representations, on the grounds that such representations were no longer used in the marketplace. 62 FR 39439 (July 23, 1997).

federal government and internationally. As explained below, the Commission declines these requests either because the record is insufficient to support them or the Commission lacks the authority to adopt them.

A. Prohibit Certain Net Quantity Comparisons

The NCWM comment urged the Commission to expand section 500.6(b)'s prohibition on supplemental descriptions of net quantity statements. The section currently prohibits misleading terms used to qualify a unit of weight or mass, measure, or count, giving specific impermissible examples such as “jumbo quart,” “giant liter,” “full gallon,” “when packed,” and “minimum.” NCWM sought to affirmatively prohibit terms such as “approximately” or “equivalent to,” explaining that such a ban would reduce consumer confusion and provide clearer guidance to businesses.

The Rule, however, already covers these statements, to the extent they are misleading, by prohibiting any net quantity qualifiers “of similar import.”³² Moreover, the record contains no evidence of widespread deception using these terms. Because an outright ban could impinge on non-deceptive comparative performance claims, the Commission declines to adopt this amendment without a greater showing that a ban is needed.

B. Permit Metric-Only Labels

Several comments sought to revise the regulations to permit metric-only labeling.³³

³² 16 CFR 500.6(b).

³³ Nichols (2), US Metric (3), IEEE (4), Schlesinger (12), Vlietstra (13), Mechtly (10), Steele (11); *see also* NCWM (1) (acknowledging that the FPLA requires use of customary inch/pound units, but recommending that the Commission exercise its enforcement discretion to allow use of metric-only net quantity statements).

However, the Act requires both customary inch/pound and metric labeling.³⁴ Thus, the Commission lacks the authority to amend the Rules to implement this proposal.

C. Change “Customary Inch/Pound” Terminology

The Rules make numerous references to “customary inch/pound” to describe non-metric measurements. One comment proposed to substitute the phrase “U.S. Customary units” in place of “customary inch/pound,” explaining the latter term is confusing because it does not, on its face, include volume (although the Rules definition does).³⁵ The Act itself, however, uses the “customary inch/pound” terminology. Creating a discrepancy between the language of the Act and that of the Rules risks injecting a new layer of confusion. Therefore, the proposed Rules continue to mirror the Act’s language.³⁶

D. Prohibit Periods and Plurals in Customary Inch/Pound Abbreviations

Section 500.22 currently permits the use of periods and plurals with customary inch/pound abbreviations in connection with the net-quantity-of-content statement. For example, a label can use “in.” or “in” as the abbreviation for “inch” and “lbs or “lb” for “pounds.” NCWM proposed to prohibit these periods and plurals because they are inconsistent with the metric system, and reportedly cause confusion in the marketplace. The NCWM comment also stated that use of periods and plurals on commodity labels is rare. If use of periods and plurals is rare, however, consumer confusion resulting from their use would be equally rare. In the absence of evidence of consumer confusion, the Commission declines to propose prohibiting the

³⁴ Section 1453(a)(2).

³⁵ NCWM (1); 16 CFR 500.2(k) (customary inch/pound includes “the fluid ounce, pint, quart, and gallon for volume.”)

³⁶ See Section 1453(a)(2) (using “customary inch/pound” phrase).

use of periods and plurals.

E. Expand the Definition of Consumer Commodity and Issue Rules Governing Non-Functional Slack-Fill

The NCWM comment asked the Commission to expand its definition of “consumer commodity” and issue rules governing non-functional slack-fill.³⁷ The comment, however, did not request specific amendments, identify wide-spread marketplace deception, or provide information on the costs and benefits of these proposals. Therefore, the Commission declines to pursue such expansion.

F. Permit Icons for Items Sold by Numeric Count

The NWCM comment sought to permit the use of icons (pictorial symbols) to display a numeric count. For example, a package could convey that it contains three razors with a label showing three razor symbols. The Rules do not prohibit the non-misleading use of icons to display numeric count. Therefore, this revision is unnecessary.

G. Require Largest Common Whole Unit for Customary Inch/Pound Measurements When Several Sizes of Same Product Are in Marketplace

One comment sought to revise the Rules to require use of the largest common whole unit for customary inch/pound measurements when several sizes of the same product are in the marketplace.³⁸ For example, if powder laundry detergent is sold in 12.5 ounce; 1 pound, 9 ounce; and 3 pound, 2 ounce sizes, NCWM sought to revise the Rules to require each container to use the largest whole unit common to all three sizes (in this instance, ounces, *e.g.* 12.5, 25, and

³⁷ “Consumer commodity” is defined in Section 1459(a) of the Act and further clarified in Sections 500.2(c), 503.2, and 503.5 of the Rules.

³⁸ NCWM (1). This proposal would affect Sections 500.9-14.

50 ounces). The Rules currently permit this expression of measurements but do not require it.³⁹ The Commission need not explore whether such an amendment would be beneficial because the Act expressly permits expression of remainders in common whole units (*e.g.*, “expressed in pounds, with any remainder in terms of ounces...”).⁴⁰ Therefore, the Commission lacks the authority to adopt such a change.

H. Harmonize Labeling Regulations

Several comments noted complexities in overlapping domestic labeling laws as well as conflicting international systems.⁴¹ For example, according to the NCWM comment, while a paper towel would be traditionally covered under the Rules, a microwave-safe paper towel would likely fall under FDA jurisdiction. As a result, businesses face difficulty achieving market efficiencies because slight changes in a product or sale region require different packaging and labels. However, the Act specifically directs the Secretary of Commerce to address uniformity between state and federal FPLA labeling regulations.⁴² Having two agencies addressing the same problem could lead to confusion, or worse, conflicting advice. Therefore, the Commission defers to the Department of Commerce, to which Congress delegated this authority. Between federal agencies and international regulators, the Commission will continue to work to the best of its ability to harmonize any overlapping regulations that unduly burden entities.

³⁹ See examples in the Act’s Section 1453(a)(3)(A)(i-iv) and the Rule’s Sections 500.9-14.

⁴⁰ Section 1453(a)(3)(A)(i-iv). For example, Section 1453(a)(3)(A)(i) states, “if on a package labeled in terms of weight, [the net quantity of contents] shall be expressed in pounds, with any remainder in terms of ounces or common or decimal fractions of the pound.” Using NCWM’s example, the 25 ounce powder laundry detergent’s net quantity statement also can be expressed either as 1 pound 9 ounces or 1.56 pounds.

⁴¹ NCWM (1), Mechtly (10), Steele (11), Schlesinger (12), IEEE (4), Nichols (2).

⁴² 15 U.S.C. 1458.

The Commission also received requests for changes beyond the scope of the Rules, such as creation of a mechanism to detect fake commodities,⁴³ uniform expiration dates,⁴⁴ and changes to a National Institute of Standards and Technology manual.⁴⁵ The Rules, however, are limited to the packaging and labeling aspects of certain consumer commodities. Therefore, these requests are beyond the subject matter of this proceeding.

VI. Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 30, 2015. 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 making sure 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 making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial

⁴³ Police Assistance Committee of Nigeria (5).

⁴⁴ Dunn (14).

⁴⁵ Beaumont (6).

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 have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).⁴⁶ Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law.

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 the Commission considers your online comment, you must file it at <https://ftcpublishcommentworks.com/ftc/fplanprm>, 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, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex G), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex G), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

⁴⁶ In particular, the written request for confidential treatment accompanying 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).

Visit the Commission website at <http://www.ftc.gov> to read this NPRM and the news release describing it. The FTC Act and other laws 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 it receives on or before March 30, 2015 . 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>.

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to these Rules. The Commission requests you provide factual data upon which your comments are based. In addition to the issues raised above, the Commission solicits public comment on the costs and benefits to industry members and consumers of each of the proposals as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

1. General Questions on Proposed Amendments: To maximize the benefits and minimize the costs for buyers and sellers (including small businesses), the Commission seeks views and data on the following general questions for each of the proposed changes described in this NPRM:

(A) What benefits would a proposed change confer and on whom? The Commission in particular seeks information on any benefits a change would confer on consumers of consumer commodities as defined in the Act.

(B) What costs or burdens would a proposed change impose and on whom? The

Commission in particular seeks information on any burdens a change would impose on small businesses.

(C) What regulatory alternatives to the proposed changes are available that would reduce the burdens of the proposed changes while providing the same benefits?

(D) What evidence supports your answers?

2. Use of Exponents with Customary Inch/Pound Units

(A) Would the proposed amendment to customary inch/pound units to permit exponents positively or negatively affect the extent to which consumers are informed about net quantity of content? If so, how?

(B) Would the proposed amendment to customary inch/pound units to permit exponents prevent deception or confusion regarding net quantity of consumer commodities? If so, how? Should the Commission provide different or additional examples of net-quantity-of-content statements for customary inch/pound units? If so, what?

(C) What evidence supports your answers?

VII. Communications to Commissioners and Commissioner Advisors by Outside Parties

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.⁴⁷

VIII. Paperwork Reduction Act

The Rules contain various existing information collection requirements for which the

⁴⁷ See 16 CFR 1.26(b)(5).

Commission has obtained OMB clearance under the Paperwork Reduction Act (“PRA”).⁴⁸ Because the proposed amendments do not trigger additional recordkeeping, disclosure, or reporting requirements, there is no incremental burden under the PRA. *See* 44 U.S.C. 3501-3521.

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”)⁴⁹ requires the Commission to conduct an analysis of the anticipated economic impact of the proposed amendments on small entities.⁵⁰ The purpose of a regulatory flexibility analysis is to ensure the agency considers the impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA⁵¹ provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission believes the proposed amendments will not have a significant economic impact on small entities, although they may affect a substantial number of small businesses. The proposed amendments expand labeling options to accommodate the rise of online media, remove unnecessary price statement prohibitions, or are technical in nature.

In the Commission’s view, the proposed amendments will not have a significant or

⁴⁸ 44 U.S.C. 3501 *et seq.* On May 2, 2012, OMB granted clearance through May 31, 2015, for these requirements and the associated PRA burden estimates. The OMB control number is 3084-0110.

⁴⁹ 5 U.S.C. 601-612.

⁵⁰ The Commission previously conducted an RFA analysis of the Rules. 59 FR 1862 (Jan. 12, 1994).

⁵¹ 5 U.S.C. 605.

disproportionate impact on the costs small entities incur in manufacturing, distributing, or selling consumer commodities. Indeed, the proposed rule revisions provide increased flexibility for companies complying with the Rule. Therefore, based on available information, the Commission certifies that amending the Rules as proposed will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA that the proposed amendments will not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has nonetheless determined it is appropriate to publish an Initial Regulatory Flexibility Analysis to inquire into the impact of the proposed amendments on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons the Agency Is Taking Action

In response to public comments, the Commission proposes amending the Rules to respond to changed commercial practices and updated industry standards.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Amendments

The objective of the proposed amendments is to clarify and update the Rules in accordance with marketplace practices. The Act authorizes the Commission to implement its requirements through the issuance of rules.

The proposed amendments will clarify and update the Rules, and provide covered entities with additional labeling options without imposing significant new burdens or additional costs.

C. Small Entities to Which the Proposed Amendments Will Apply

The proposed amendments cover every company in the economy that produces consumer commodities other than those commodities falling within the authority of other agencies or

otherwise outside the Act's or Rules' scope. Based on available information, it is not feasible for the Commission to estimate the number of entities within this class of industry that are also small companies within the meaning of the Regulatory Flexibility Act.⁵² A substantial number of these entities likely qualify as small businesses. Nevertheless, the Commission estimates that the proposed amendments will not have a significant impact on small businesses because the proposed amendments do not impose any significant new obligations. The Commission seeks comment with regard to the estimated number or nature of small business entities, if any, for which the proposed amendments would have a significant impact.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed to Comply

As explained earlier in this document, the proposed amendments expand labeling options to accommodate the rise of online media, remove unnecessary price statement prohibitions, or are technical in nature. The small entities potentially covered by these proposed amendments will include all such entities subject to the Rules. The professional skills necessary for compliance with the Rules as modified by the proposed amendments will include office and administrative support supervisors to determine label content and clerical personnel to draft and obtain labels and keep records. The Commission invites comment and information on these issues, including estimates or data on specific compliance costs that small entities might be expected to incur.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies duplicating, overlapping, or conflicting with the proposed amendments. The Commission invites comment on this issue.

⁵² 5 U.S.C. 601(3).

F. Significant Alternatives to the Proposed Amendments

The Commission has not proposed any specific small entity exemption or other significant alternatives, as the proposed amendments expand labeling options to accommodate the rise of online media, remove unnecessary price statement prohibitions, or are technical in nature. In addition, these proposed changes provide new flexibilities for small entities by, for example, allowing regulated entities to omit a business address from a label if the address is readily available in an online directory or other website. Under these limited circumstances, the Commission does not believe a special exemption for small entities or significant compliance alternatives are necessary or appropriate to minimize the compliance burden, if any, on small entities while achieving the intended purposes of the proposed amendments. Nonetheless, the Commission seeks comment on the need, if any, for alternative compliance methods to reduce the economic impact of the Rules on small entities. If the comments filed in response to this NPRM identify small entities affected by the proposed amendments, as well as alternative methods of compliance that would reduce the economic impact of the proposed amendments on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final Rules.

List of Subjects

16 CFR Part 500

Fair Packaging and Labeling Act, Incorporation by reference, Labeling, Packaging and containers, Trade practices.

16 CFR Part 502

Fair Packaging and Labeling Act, Labeling, Packaging and containers, Trade practices.

Under 15 U.S.C. 1454-1455 and as discussed in the preamble, the Federal Trade Commission proposes to amend title 16 of the Code of Federal Regulations by revising parts 500 and 502 as follows:

PART 500—REGULATIONS UNDER SECTION 4 OF THE FAIR PACKAGING AND LABELING ACT

1. The authority citation for part 500 continues to read as follows:

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

2. Amend § 500.3 by revising paragraph (d) to read as follows:

§ 500.3 Prohibited acts, coverage, general labeling requirements, exemption procedures.

* * * * *

(d) Each packaged or labeled consumer commodity, unless it has been exempted through proceedings under section 5(b) of the Act, shall bear a label specifying the identity of the commodity; the name and place of business of the manufacturer, packer, or distributor; the net quantity of contents; and the net quantity per serving, use or application, where there is a label representation as to the number of servings, uses, or applications obtainable from the commodity. Many products exempted through proceedings under section 5(b) of the Act and paragraph (e) of this section or excluded under part 503 of this chapter nonetheless fall within the purview of the weights-and-measures laws of the individual states.

* * * * *

3. Amend § 500.5 by revising paragraph (c) to read as follows:

§ 500.5 Name and place of business of manufacturer, packer or distributor.

* * * * *

(c) The statement of the place of business shall include the street address, city, state, and zip code; however, the street address may be omitted if it is listed in a readily accessible, widely published, and publicly available resource, including but not limited to a printed directory, electronic database, or website.

* * * * *

4. Amend § 500.19 by revising paragraph (a) to read as follows:

§ 500.19 Conversion of SI metric quantities to inch/pound quantities and inch/pound quantities to SI metric quantities.

(a) For calculating the conversion of SI metric quantities to and from customary inch/pound quantities, the conversion chart published in the following handbook shall be employed: National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality (2015 ed., p. 95). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Federal Trade Commission by calling 202-326-2222, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

<http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

* * * * *

5. Revise § 500.22 to read as follows:

§ 500.22 Abbreviations.

The following abbreviations and none other may be employed in the required net quantity declaration:

Inch—in.

Feet or foot—ft.

Fluid—fl.

Liquid—liq.

Ounce—oz.

Gallon—gal.

Pint—pt.

Pound—lb.

Quart—qt.

Square—sq.

Weight—wt.

Yard—yd.

Avoirdupois—avdp.

Cubic—cu.

NOTE: Periods and plural forms shall be optional. Exponents are permitted.

**PART 502—REGULATIONS UNDER SECTION 5(C) OF THE FAIR PACKAGING
AND LABELING ACT**

6. The authority citation for part 502 is revised to read as follows:

AUTHORITY: 15 U.S.C. 1454, 1455.

§§ 502.100 through 502.102 [Removed and reserved]

7. Remove and reserve §§ 502.100 through 502.102.

By direction of the Commission.

Donald S. Clark
Secretary.

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