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FEDERAL TRADE COMMISSION

16 CFR Part 410

RIN 3084-AB44

Trade Regulation Rule Concerning Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets

AGENCY: Federal Trade Commission.

ACTION: Advance Notice of Proposed Rulemaking (ANPR); Request for Public Comment.

SUMMARY: As part of its systematic review of all current FTC rules and guides, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC’s Trade Regulation Rule concerning Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (“Rule” or “Picture Tube Rule”).

DATES: Comments must be received on or before August 31, 2017.

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: “16 CFR part 410—Picture Tube Rule Review, File No. P174200” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/picturetuberule> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “16 CFR part 410—Picture Tube Rule Review, Matter No. P174200” 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 B), 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 B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: John Andrew Singer, (202) 326-3234, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission promulgated the Picture Tube Rule in 1966,¹ to prevent deceptive claims regarding television screens' size and encourage uniformity in measurement, thereby aiding comparison shopping. The Rule sets forth the appropriate means to disclose the method used to measure the dimensions of television screens.² Under the Rule, marketers must base any representation of screen size on the horizontal dimension of the actual, viewable picture area unless they disclose the alternative method of measurement clearly and conspicuously, and in close proximity, to the size designation.³ The Rule also directs that marketers base the measurement on a single-plane basis, without taking into account any screen curvature.⁴ Finally, it includes examples of both proper and improper size representations.⁵

¹ 31 FR 3342 (Mar. 3, 1966).

² 16 CFR 410.1.

³ The Rule provides that “any referenced or footnote disclosure of the manner of measurement by means of the asterisk or some similar symbol does not satisfy the ‘close connection and conjunction’ requirement of this part.” *Id.*, Note 2.

⁴ *Id.*, Note 1.

⁵ *Id.*, Note 2.

II. Regulatory Review Program

The Commission reviews its rules and guides periodically to seek information about their costs and benefits, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry avoid deceptive claims. These reviews assist the Commission in identifying rules and guides that warrant modification or rescission. The Commission last reviewed the Rule in 2006, retaining it unchanged.⁶ With this document, the Commission initiates a new review. It solicits comments on, among other things: the economic impact of and the continuing need for, the Rule; the Rule's benefits to consumers; and the burdens it places on industry, including small businesses. The Commission further solicits comments, and invites the submission of data, regarding how consumers understand dimension claims for televisions, including: whether consumers understand the stated dimensions, whether the dimensions are limited to the set's viewable portion, and whether the dimensions are based on a single-plane measurement that does not include curvature in the set's screen.⁷ The Commission also solicits comments on whether advances in broadcasting and television technology, such as the introduction of curved screen display panels and changing aspect ratios (*e.g.*, from the traditional 4:3 to 16:9), create a need to modify the Rule. Finally, it requests comments regarding whether the Rule should address viewable screen size measurement reporting tolerances and rounding.

III. Issues for Comment

To aid commenters in submitting their comments, the Commission provides the following general regulatory review questions and specific questions related to the Picture Tube Rule. The Commission seeks comments on these and any other issues related to the Rule's current

⁶ 71 FR 34247 (Jun. 14, 2006).

⁷ In the 50 years since the Rule's adoption, marketers have come typically to advertise screen size based on a single-plane diagonal measurement of the screen's viewable portion. The Commission, *infra*, solicits comments and data on whether this practice is continuing with the relatively recently introduced curved display panel television sets.

requirements. In their replies to each of these questions, commenters should provide any available evidence and data, such as empirical data, consumer perception studies, or consumer complaints, that support the positions asserted in their comments.

A. General Regulatory Review Questions

- (1) *Need:* Is there a continuing need for the Rule? Explain why or why not. Is there a need for a rule to address any unfair or deceptive acts or practices concerning television screen sizes or would case-by-case enforcement be a better approach to addressing such practices?
- (2) *Unnecessary Provisions:* Are any specific provisions of the Rule no longer necessary? If so, identify these provisions and explain why they are unnecessary.
- (3) *Benefits and Costs to Consumers:* What benefits, if any, does the Rule provide to consumers, and does the Rule impose any significant costs on consumers?
- (4) *Benefits and Costs to Industry Members:* What benefits, if any, does the Rule provide to businesses, and does the Rule impose any significant costs, including compliance costs, on businesses, including small businesses?
- (5) *Recommended Changes:* What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs? Explain the specific modifications you propose and how they would affect the Rule's costs and benefits for consumers and businesses, particularly small businesses.
- (6) *Impact on Information:* What impact does the Rule have on the flow of truthful information to consumers and deceptive information to consumers?
- (7) *Compliance:* What is the degree of industry compliance with the Rule? Does this compliance level indicate that the Commission should modify the Rule? If so,

explain why and how the Commission should do so.

- (8) *Additional Unfair or Deceptive Practices:* Are there unfair or deceptive practices not covered by the Rule occurring in the marketplace relating to the advertising and promotion of the viewable picture size of television set screens? If so: (a) describe these practices and provide evidence of their existence; (b) state their prevalence; (c) state their impact on consumers; (d) explain what modifications the Commission should make to the Rule to eliminate such practices; and (e) explain how any modification would impact consumers and businesses, particularly small businesses.
- (9) *Product Coverage:* Should the Commission broaden the Rule to include products not currently covered? If so: (a) identify these products; (b) describe the unfair or deceptive practices occurring regarding these products and provide evidence of these practices; (c) state the prevalence of these practices; (d) explain what modifications the Commission should make to the Rule to cover these practices; (e) explain how these modifications would eliminate these practices; and (f) explain how any modification would impact consumers and businesses, particularly small businesses.
- (10) *Overlaps and Conflicts with, and Effects on, Other Requirements:* Does the Rule overlap or conflict with other Federal, State, or local laws or regulations? If so: (a) identify these laws or regulations; (b) describe how the Rule overlaps or conflicts; and (c) explain how the Commission should modify the Rule to eliminate or lessen such overlaps or conflicts. Additionally, are any modifications to the Rule necessary to assist state law enforcement agencies' efforts to combat

deceptive or unfair practices in television set marketing? If so, explain what modifications the Commission should make to the Rule and how they will assist these agencies.

B. Specific Questions Related to the Picture Tube Rule

- (1) *Consumer Understanding of Screen Measurements Generally:* What understanding do consumers have regarding television screen dimensions stated in advertisements, *e.g.*, do they think the dimensions are diagonal, horizontal, or vertical; single or multi-plane; include only the viewable screen area? Submit evidence supporting your position.
- (2) *The Rule's Default Screen Measurement Method:* Should the Rule's default television set screen measurement method change, *e.g.*, to the diagonal single-plane measurement of the viewable portion of a screen? If so: (a) explain how, and why, the default screen measurement method should change; (b) explain whether the Commission should continue to require that, when a screen dimension stated in advertising is based upon anything but the default measurement method, the method used must be disclosed clearly and conspicuously, and in close proximity, to the dimension; (c) submit evidence supporting your position; and (d) explain how the default screen measurement method that you proposed in response to (a), *supra*, would impact consumers and businesses, particularly small businesses.
- (3) *Curved Display Screens:* Note 1 to the Rule directs that the viewable picture size of television set screens be measured on a single-plane basis, not taking into account any screen curvature. When the Commission originally promulgated this

provision, television sets used cathode ray tubes with curved display screens.

Today, television sets generally incorporate plasma, LED, OLED, and similar flat display screens, though some television sets have concave display screens. (a) Do consumers understand that stated dimensions are based on a single-plane measurement that does not include curvature in the screen? Submit evidence supporting your position. (b) Does the use of curved screens affect how manufacturers and marketers measure and promote the viewable screen size of television sets? If so: (1) identify and explain these effects; (2) explain how, if at all, the Commission should modify the Rule to address these effects; and (3) explain how any modification would impact consumers and businesses, particularly small businesses.

- (4) *Measurement Reporting Tolerances and Rounding*: The Rule does not address how to disclose the viewable screen size of television sets that do not, consistent with Note 2, measure precisely to an inch or 100th of a centimeter measurement. In 2008, industry requested staff guidance on rounding because promotional material measurements were often off by up to ½-inch to avoid waste in cutting glass from standard sheets. Staff advised, with the caveat that it did not speak for the Commission, that it was unlikely to recommend enforcement action based on an up to ½-inch discrepancy, as long as marketers make clear that the larger number represents a class size and state the actual screen measurement, clearly and conspicuously, and in close proximity to the class size representation, *e.g.*, 32” Class, 31.75” actual measurement. Explain: (a) how, if at all, the Commission should modify the Rule to address this issue; and (b) how any

modification would impact consumers and businesses, particularly small businesses.

- (5) *Aspect Ratios:* Some television sets have viewing screens with a 16:9 (1.77:1) aspect ratio rather than 4:3 (1.33:1) ratio. Do different aspect ratios affect how manufacturers and marketers measure and promote the viewable screen size of television sets? If so: (a) identify how different aspect ratios change screen measurement and television set marketing; (b) explain how, if at all, the Commission should modify the Rule to address this issue; and (c) explain how any modification would impact consumers and businesses, particularly small businesses.
- (6) *Technological or Economic Changes:* Should the Commission otherwise modify the Rule to account for current or impending changes in technology or economic conditions that may affect television sets? If so: (a) identify these changes; (b) explain how, if at all, the Commission should modify the Rule to address this issue; and (c) explain how any modifications would impact consumers and businesses, particularly small businesses.

IV. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 31, 2017. Write “16 CFR part 410—Picture Tube Rule Review, File No. P174200” 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 Web site, at <http://www.ftc.gov/policy/public-comments>.

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

If you prefer to file your comment on paper, write “16 CFR part 410—Picture Tube Rule Review, File No. P174200” 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 B), 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 B), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’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. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by 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) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website 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 August 31, 2017. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

Donald S. Clark
Secretary.

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