



[BILLING CODE 6750-01S]

FEDERAL TRADE COMMISSION

16 CFR Part 410

Deceptive Advertising as to Sizes of

Viewable Pictures Shown by Television Receiving Sets

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (“Commission”) has completed its regulatory review of its Trade Regulation Rule Concerning the Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (“Picture Tube Rule” or “Rule”), as part of its systematic review of all current Commission regulations and guides. Pursuant to that review, the Commission now determines that the Rule is no longer necessary to prevent deceptive claims regarding the size of television screens and to encourage uniformity and accuracy in their marketing. The Commission, therefore, repeals the Rule.

DATES: This rule is effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Relevant portions of the record of this proceeding, including this document, are available at <https://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: John Andrew Singer, Attorney, (202) 326-3234, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, CC-9528, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission promulgated the Picture Tube Rule in 1966¹ to prevent deceptive claims regarding the size of television screens and to encourage uniformity and accuracy in marketing. When the Commission adopted the Rule, it expressed concern about consumer confusion regarding whether a television's advertised screen dimension represented the actual viewable area of a convex-curved cathode ray tube (CRT) or included the viewable area of the picture tube plus non-viewable portions of the tube, such as those behind a casing. In addition, the Commission concluded that most consumers perceived the sizes of rectangular shaped objects, like television screens, in terms of their length or width, not their diagonal dimension.²

Based on these concerns, the Rule sets forth the means to non-deceptively advertise the dimensions of television screens.³ Thus, 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 (such as the diagonal dimension) clearly, conspicuously, and in close connection and conjunction to the size designation.⁴ The Rule also directs marketers to base the measurement on a single plane, without taking into account any screen curvature,⁵ and includes examples of both proper and improper size representations.⁶

¹ 31 FR 3342 (Mar. 3, 1966).

² *Id.* at 3342-43.

³ 16 CFR 410.1.

⁴ *Id.*

⁵ *Id.*, Note 1.

⁶ *Id.*, Note 2.

II. Regulatory Review

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 repeal. The Commission last reviewed the Rule in 2006, leaving it unchanged.⁷

A. 2017 Advance Notice of Proposed Rulemaking (ANPR)

In its 2017 ANPR initiating the current Rule review, the Commission solicited comment 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.⁸

The Commission further solicited comment regarding how consumers understand dimension claims for television screens, including: whether consumers understand the stated dimensions; whether the dimensions are limited to the screen's viewable portion; and whether the dimensions are based on a single-plane measurement that does not include curvature in the screen. The Commission also solicited input 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, the Commission requested comment regarding whether the Rule should address viewable screen size measurement reporting tolerances and rounding.⁹

⁷ 71 FR 34247 (June 14, 2006).

⁸ 82 FR 29256 (June 28, 2017).

⁹ *Id.* at 29257-58.

The Commission received two comments in response, both urging the Commission to repeal the Rule.¹⁰ Both commenters characterized the Rule as an unnecessary relic from when televisions used curved CRTs. For example, the Consumer Technology Association (CTA), a trade association representing the U.S. consumer technology industry, commented that televisions with fully viewable, single plane, flat screens have become ubiquitous, and that the use of the diagonal measurement to represent screen size, both for televisions and for products with viewing screens not within the scope of the Rule, has become standard.¹¹

Commission staff observations confirmed that virtually all televisions in the marketplace have flat screens. Moreover, staff observed that marketers uniformly advertise the diagonal screen measurement for televisions, as well as for devices with screens not subject to the Rule, such as computer monitors, tablets, and cellphones.¹²

B. 2018 Notice of Proposed Rulemaking (NPR)

Based upon the comments to the ANPR and staff's observations, the Commission's 2018 NPR proposed repealing the Rule.¹³ In the NPR, the Commission observed that the record suggested that the Rule has not kept up with changes in the marketplace. The Commission noted that there have been substantial changes in television screen technology since the Rule's adoption, particularly in the past decade. In 1966, television screens had CRTs,¹⁴ portions of

¹⁰ The comments are located at: <https://www.ftc.gov/policy/public-comments/2017/07/initiative-707>. Jonathan Applebaum (#3) and Consumer Technology Association ("CTA") (#4) submitted comments. CTA's comment to the ANPR is cited herein as "CTA-I."

¹¹ 83 FR 17117, 17118 (Apr. 18, 2018).

¹² *Id.* at 17118.

¹³ *Id.* at 17118-19.

¹⁴ CTA-I at 4.

which did not provide a viewable image.¹⁵ Today, virtually all televisions have flat screens where the viewable image covers the entire surface.¹⁶ Consequently, a television screen's viewing area is easy to ascertain and, therefore, claims regarding viewing area are not likely to deceive consumers.¹⁷ The Commission also stated that mandatory screen measurements appear to no longer be necessary to prevent consumer deception because the industry standard for representing screen size is a screen's diagonal dimension.¹⁸ Finally, the Commission concluded that the record lacked evidence of deception supporting retaining the Rule. In response to the ANPR, the Commission received no comments advocating for the Rule's retention or submitting information indicating that manufacturers are making deceptive screen size claims.

Accordingly, in its 2018 NPR, the Commission preliminarily concluded that the Rule is outdated and no longer necessary to protect consumers and stated that, “[n]othing in the record suggests that repealing the Rule would likely result in any consumer deception.”¹⁹ It also sought further comment on the costs, benefits, and market effects of repealing the Rule, and particularly the cost on small businesses.²⁰

¹⁵ *Id.*

¹⁶ *Id.* at 5; 83 FR at 17119.

¹⁷ *See, e.g.*, 60 FR 65529 (Dec. 20, 1995) (Commission repealed Binocular Rule, former 16 CFR part 402, finding technological improvements rendered it obsolete).

¹⁸ 83 FR at 17119.

¹⁹ *Id.*

²⁰ *Id.* at 17119-20.

III. Issues Raised by Commenters to the 2018 NPR

The Commission received four comments in response to the NPR.²¹ CTA reiterated that the Commission should repeal the Rule. Three individual consumers argued the Commission should retain the Rule, but did so without submitting any evidence to support their position.

In support of repeal, CTA repeated its contention that the state of technology for televisions – flat screens extending to virtually the end of any casing – make it unlikely that any manufacturer would use any measurement other the diagonal dimension of the screen to represent its size.²² CTA reiterated that even manufacturers of consumer products with screens not subject to the Rule, such as monitors, smartphones and tablets, uniformly use the diagonal measurement to represent screen size.²³ Consequently, CTA stated that keeping the Rule would not provide any meaningful benefit to consumers because market forces will continue to make a screen’s diagonal measurement the industry standard for televisions.²⁴ CTA also noted that the Commission has not brought an enforcement action to compel compliance with the Rule in the more than 50 years since its adoption.²⁵ Repealing the Rule, according to CTA, would not create any significant costs for manufacturers since they already use the diagonal screen measurement, and there is nothing to suggest that this would change after repeal.²⁶

²¹ These comments are located at: <https://www.ftc.gov/policy/public-comments/2018/03/initiative-744>. John Stover (#2), Georgianne Giese (#3), Frank Muenzer (#4), and CTA (#5) submitted comments. CTA’s comment to the NPR is cited herein as “CTA-II.”

²² CTA-II at 4-5.

²³ *Id.* at 5.

²⁴ *Id.* at 5-6.

²⁵ *Id.* at 6.

²⁶ *Id.* at 7.

CTA also asserted that the Commission previously repealed trade regulation rules under similar circumstances, including when rules became obsolete due to changing technology;²⁷ decades had passed without any enforcement actions;²⁸ and any problems with deception arising after a rule repeal could be addressed on a case-by-case basis in the absence of an industry-wide rule.²⁹

Finally, CTA requested that, in addition to repealing the Rule, the Commission affirmatively declare that all “state regulations akin to the Rule – including interpretations of state laws prohibiting unfair or deceptive acts or practices – are in conflict with federal policy and are therefore preempted.”³⁰ CTA contended that a decision by the Commission not to regulate television screen measurement by repealing the Rule creates a federal policy that no entity may regulate television screen measurement. Therefore, according to CTA, the Commission’s decision not to regulate an issue has the identical preemptive effect as the issuance of an affirmative regulation on an issue.³¹

Three individual consumers urged the Commission to retain the Rule unchanged. John Stover stated the Rule should remain in effect because its retention “does no harm.” Georgianne Giese commented the Rule should remain in effect because, “if it ain’t broke, don’t fix it,” and because the Rule standardizes television screen measurement. Finally, Frank Muenzer stated

²⁷ *Id.* at 7-8 (citing Commission’s 1995 repeal of the Binocular Rule).

²⁸ *Id.* (citing Commission’s 1996 repeal of Games of Chance Rule).

²⁹ *Id.* (citing Commission’s 1996 repeal of Leather Belt Rule).

³⁰ *Id.* at 11.

³¹ *Id.* at 10.

that the proposed repeal of the Rule “appears to be a politically motivated completely unnecessary removal of a useful regulation.”³²

IV. Basis for Repealing the Rule

Section 18 of the FTC Act, 15 U.S.C. 57a, authorizes the Commission to promulgate, amend, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1). The Commission regularly reviews its rules to ensure they are up-to-date, effective, and not overly burdensome, and has repealed a number of trade regulation rules after finding they were no longer necessary to protect consumers.³³

The additional comments received in response to the NPR affirm the Commission’s preliminary conclusion³⁴ that current conditions support repealing the Rule. As explained in detail below, the record indicates that: (1) the Rule has not kept up with changes in the marketplace; (2) mandatory screen measurement instructions are no longer necessary to prevent consumer deception; and (3) manufacturers are not making deceptive screen size claims. Therefore, based on the record, the Commission now repeals the Rule.

First, the record indicates that the Rule has not kept up with changes in the marketplace. Specifically, as both CTA’s comments and Commission staff’s observations confirm, virtually

³² See n. 21, *supra*.

³³ See, e.g., 16 CFR part 419 (games of chance) (61 FR 68143 (Dec. 27, 1996) (rule outdated; violations largely non-existent; and rule has adverse business impact); 16 CFR part 406 (used lubricating oil) (61 FR 55095 (Oct. 24, 1996)) (rule no longer necessary, and repeal will eliminate unnecessary duplication); 16 CFR part 405 (leather content of waist belts) (61 FR 25560 (May 22, 1996)) (rule unnecessary and duplicative; rule’s objective can be addressed through guidance and case-by-case enforcement); and 16 CFR part 402 (binoculars) (60 FR 65529 (Dec. 20, 1995)) (technological improvements render rule obsolete). These prior rule repeals demonstrate that the Commission has a long-standing practice of repealing certain trade regulation rules when, as here, they are no longer necessary to prevent consumer deception.

³⁴ 83 FR at 17119.

all televisions now have flat screens where the viewable image covers the entire surface.³⁵

Moreover, these televisions are surrounded by thin bezels, not casings or console walls, which do not obscure any of the screens. Thus, in contrast to technology at the time the Commission promulgated the Rule, there currently is no ambiguity regarding a television screen's viewing area. Screen size claims, therefore, no longer are fertile ground for widespread deceptive claims.

Second, to the extent lack of uniformity in screen size measurements (*i.e.*, diagonal vs. horizontal) increases the chances of deception, the Rule is not now necessary to create that uniformity. CTA's comments confirm staff's observation that, although the Rule mandates a single plane horizontal measurement of a television screen's viewable portion as the default measurement,³⁶ the industry universally measures television screen sizes using the diagonal dimension.³⁷ The record further demonstrates that manufacturers universally use a screen's diagonal dimension to represent sizes for screens contained in the many consumer devices outside the scope of the Rule.³⁸ The ubiquity of the diagonal dimension indicates that consumers expect to compare screens' diagonal dimensions when purchasing televisions. Thus, the market has created the uniformity the Rule originally sought.

Finally, the record lacks evidence of any deception in the marketplace that supports a continuing need for the Rule. No commenter submitted information indicating that

³⁵ CTA-I at 4-5; CTA-II at 4-5; 83 FR at 17118.

³⁶ 31 FR 3342, 3343 (Mar. 3, 1966) (former 16 CFR 4.103(b)); 16 CFR 410.1. Manufacturers may use an alternative method of measurement if they disclose this method clearly, conspicuously, and in close connection and conjunction to the size designation. 16 CFR 410.1.

³⁷ CTA-I at 5-6; CTA-II at 5-6; 83 FR at 17118.

³⁸ CTA-II at 5-6; 83 FR at 17118.

manufacturers are making deceptive screen size claims. Additionally, the Commission has received no complaints about manufacturers making such claims over the past 5 years.³⁹

Accordingly, the Commission concludes that the Rule is no longer necessary to protect consumers from deceptive representations of screen size or to encourage uniformity and accuracy in marketing televisions. Nothing in the record suggests that repealing the Rule would likely result in any consumer deception. Therefore, any minimal costs associated with the Rule for businesses now outweigh any benefits to consumers.⁴⁰ The Commission can address any deceptive marketing on a case-by-case basis through enforcement actions brought under Section 5(a) of the FTC Act, 15 U.S.C. 45(a), rather than by imposing an industry-wide trade regulation rule.⁴¹

V. The Repeal of the Rule is Not Intended to Preempt State Action for Deceptive or Unfair Acts or Practices Regarding Television Screen Size

To prevent what CTA characterized as the potential for “a complicated patchwork quilt of inconsistent [state law] mandates,”⁴² it asked the Commission to issue an affirmative statement that by repealing the Rule it intends to preempt any state regulatory or enforcement actions regarding representations of television screen size.⁴³ The Commission declines to issue such a statement.

³⁹ The Commission retains complaint data for five years. The data reported above is based on a search of Consumer Sentinel conducted on July 18, 2018.

⁴⁰ See CTA-I at 7-8; CTA-II at 7.

⁴¹ 15 U.S.C. 45(a). See CTA-I at 3 and CTA-II at 7-8. See also, e.g., 61 FR 25560, 25560-61 (May 22, 1996) (in repealing Leather Content in Waist Belts Rule due, in part, to lack of the need for enforcement, the Commission stated that should it find any future deception of the type that the Rule was intended to prevent, the Commission could address this deception through case-by-case enforcement).

⁴² CTA-II at 9.

⁴³ CTA-II at 9-11.

While the Commission concludes that a trade regulation rule for television screen measurement is no longer necessary, it retains its authority to address future unfair or deceptive practices relating to television screen measurement on a case-by-case basis.⁴⁴ Similarly, states have authority under analogous state laws. Therefore, the Commission's repeal of the Rule is not intended to preempt the states from taking regulatory or enforcement actions to prevent deception or unfairness concerning television screen measurement.

VI. Regulatory Flexibility Act and Regulatory Analysis

Under Section 22 of the FTC Act, 15 U.S.C. 57b-3, the Commission must issue a final regulatory analysis for a proceeding to amend a rule only when it: (1) estimates that the amendment will have an annual effect on the national economy of \$100 million or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission determines that the repeal of the Rule will not have such effects on the national economy; on the cost of televisions; or on covered parties or consumers. The Rule repeal, rather than imposing any costs on covered parties or consumers, will eliminate any costs associated with complying with the Rule. Accordingly, the repeal of the Rule is exempt from Section 22's final regulatory analysis requirements.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-612, requires that the Commission conduct an analysis of the anticipated economic impact of the amendment of a rule on small entities. The purpose of a regulatory flexibility analysis is to ensure that an 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 RFA, 5 U.S.C. 605,

⁴⁴ See n. 41, *supra*.

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 concludes that the repeal of the Rule will not have a significant economic impact upon small entities because the Rule's repeal will eliminate any costs associated with complying with the Rule. Therefore, in the Commission's view, the repeal of the Rule will not have a significant or disproportionate impact on the costs of small entities that sell televisions. These entities appear to provide consumers with the screen size as measured by a television's manufacturer and that typically appears on a television's packaging. In addition, the Commission is not aware of any existing federal laws or regulations that address the measurement of television screens and that would conflict with the repeal of the Rule. Therefore, based on available information, the Commission certifies that repealing the Rule will not have a significant economic impact on a substantial number of small entities.

VII. Repeal of Rule

For the reasons stated in the preamble, and under the authority of 15 U.S.C. 57a, the Commission removes 16 CFR part 410.

List of Subjects in 16 CFR Part 410

Advertising, Electronic funds transfer, Television, and Trade practices.

By direction of the Commission, Commissioner Wilson not participating.

Donald S. Clark,
Secretary.

PART 410 – [REMOVED]

Accordingly, under the authority of 15 U.S.C. 57a, the Commission removes 16 CFR part 410. [FR Doc. 2018-21803 Filed: 10/5/2018 8:45 am; Publication Date: 10/9/2018]