Supporting Statement for Information Collection Provisions
Contained in the Regulations Implementing the
Fair Packaging and Labeling Act
16 C.F.R. Parts 500-503
(OMB Control #: 3084-0110)

1. Necessity for Collecting the Information

The Fair Packaging and Labeling Act, 15 U.S.C. §§ 1451-1461 ("FPLA" or "Act"), was enacted in order to: (1) eliminate consumer confusion in the marketplace; (2) standardize the means used by sellers to disclose package content information to buyers; and (3) eliminate consumer deception and confusion concerning product size representations. As stated in Section 2 of the Act, Congress believed that "[p]ackages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons." 15 U.S.C. § 1451. The Act, in turn, directs the Federal Trade Commission ("FTC" or "Commission") to issue regulations requiring that all "consumer commodities"[1] be labeled to disclose net contents, identity of commodity, and name and place of business of the product's manufacturer, packer, or distributor. The Act authorizes additional regulations where necessary to prevent consumer deception (or to facilitate value comparisons) regarding descriptions of ingredients, slack fill of packages, use of "cents-off" or lower price labeling, or characterization of package sizes.

In 1968, the Commission issued regulations implementing the FPLA. These regulations are codified at 16 C.F.R. Parts 500-503. The FPLA regulations establish requirements for the manner and form of labeling consumer commodities (as defined in the FPLA) regarding: (1) the identity of the commodity; (2) the name and place of business of the manufacturer, packer, or distributor; (3) the net quantity of contents (in both inch/pound units and metric units); and (4) the net quantity of servings, uses or applications represented to be present. 16 C.F.R. §§ 500.3-500.26. The regulations also require sellers that make "cents off," "introductory offer," or "economy size" claims to keep records for one year showing compliance with the Act's requirements for such claims. 16 C.F.R. §§ 502.100-502.102.

The FPLA regulations closely parallel the statute's requirements, and provide detailed guidance on the manner and form of disclosures the Act requires. The Commission has enforcement responsibility over package disclosures placed upon "consumer commodities" as defined in the FPLA. The Food and Drug Administration ("FDA") administers the FPLA regarding food, drugs, cosmetics, and medical devices. The FTC administers the FPLA regarding other "consumer commodities" that are consumed or expended in the household. The U.S. Department of Agriculture has analogous responsibilities and regulations covering meat and

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[1] "Consumer commodity" means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use." 16 C.F.R. § 500.2(c). For the precise scope of the term's coverage see 16 C.F.R. § 500.2(c); 503.2; 503.5. See also http://www.ftc.gov/os/statutes/fpla/outline.html.

poultry products.

2. Use of the Information

The information required to be disclosed by these regulations is used by consumers to make informed product value comparisons and purchasing decisions.

3. Consideration to Use Improved Information Technology to Reduce Burden

Firms subject to these regulations are free to use improved information disclosure and package printing technologies to reduce the burden of complying. In the many years since the issuance of the FPLA regulations, firms required to comply have integrated the process of compliance into routine packaging operations. Compliance requirements are reasonably well understood throughout the industry, and formal enforcement actions have not been necessary in recent years. State officials responsible for weights and measures activities play a central role in assuring that consumers receive accurate and complete product disclosure at the point of sale.

Disclosing packaging information to consumers, however, entails labeling on consumer commodities or their packaging; as such, providing an option for electronic disclosure pursuant to the Government Paperwork Elimination Act, 44 U.S.C. § 3502 note, is impracticable.

4. Efforts to Identify Duplication/Availability of Similar Information

Although the scheme of FPLA enforcement involves several agencies (see #1 above), there is no duplication of compliance requirements for any particular product subject to the Act. There has been sufficient liaison between the enforcement staffs of the agencies involved to eliminate any serious concern on the part of firms that market in more than one product category subject to the Act.

5. Efforts to Minimize Burden on Small Businesses

Section 3(a) of the FPLA leaves no discretion for exemption or modification of requirements based on firm size. 15 U.S.C. § 1452. The burden for small businesses is already minimized because the requirements of these regulations are limited to information that a company would receive in the ordinary course of business. For the most part, compliance with the FPLA regulations entails no more than affected entities consulting the FTC (and/or company in-house counsel) on an as-needed basis to answer questions they may have to help ensure such compliance.

6. Consequences of Conducting Collection Less Frequently

The statutory framework requiring information disclosure on packages does not provide any basis for reducing the frequency of information disclosure.

7. Circumstances Requiring Collection Inconsistent with Guidelines

The collection of information in these regulations is consistent with the OMB guidelines stated in 5 C.F.R. § 1320.5(d)(2).

8. Consultation Outside the Agency

These regulations were promulgated in accordance with the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. § 553 et seq. Primary responsibility for implementing the FPLA regulations has been delegated to the Commission's Bureau of Consumer Protection, Division of Enforcement, which has continuous informal contact with industry members who need guidance concerning compliance requirements.

Pursuant to its ongoing regulatory review of all its rules, regulations, and guides, the Commission in 1993-1994 conducted a review of its FPLA regulations, which included issuance of a Federal Register notice seeking public comment on the effects of the regulations. Comments sought included information regarding the hours and cost burdens for affected entities. See 58 Fed. Reg. 43,726, 43,731 (August 17, 1993). Although two comments were received that addressed the impact upon small businesses, there were no comments relating to the economic impact of the regulations on larger businesses.[2]

In the years since, the Commission has periodically sought and obtained renewed OMB clearance regarding the FPLA regs while publishing notice for comment regarding that. Most recently, the Commission sought public comment in connection with its latest PRA clearance request for these regulations, in accordance with 5 C.F.R. § 1320.8(d). See 73 Fed. Reg. 60,286 (October 10, 2008). No comments were received. Consistent with 5 C.F.R. § 1320.12(c), it is doing so again contemporaneous with this submission.

9. Payments or Gifts to Respondents

Not applicable.

10. & 11. Assurances of Confidentiality/Matters of Sensitive Nature

Not applicable.

12. Estimated Information Collection Burden

Estimated annual hours burden: 7,570,740 total burden hours (solely relating to

[2] The two comments did not state concerns with the scope or the intent of the regulations, but with the proposed timetable for compliance with the metric amendments. See 59 Fed. Reg. 1,862, 1,870 (January 12, 1994). The effective date of the metric amendments, February 14, 1994, has passed and, thus, is no longer an issue.

disclosure[3])

The major information collection burden of the FPLA regulations comes from the Act's consumer commodity labeling requirements. Arriving at accurate estimates of the number of respondents subject to these regulations and annual burden work hours caused by these rules presents a number of difficulties. For example, independent data does not tidily conform to the dividing lines of jurisdiction between the FTC and the FDA.

Based on U.S. Census data, however, staff conservatively estimates that approximately 757,074 manufacturers, packagers, distributors, and retailers of consumer commodities make disclosures at an average burden of ten hours per entity, for a total disclosure burden of 7,570,740 hours. As in the past, Commission staff has used Census data to estimate the number of companies. Based on a revised approach to the commodity categories in the Retail Trade Census data, staff has eliminated much of the overlapping redundancies and lowered the estimate of the number of retailers that sell products subject to the Commission's FPLA regulations. For example, many retailers that sell soap products also sell paper products. Thus, adding the number of such entities together would overestimate the number of retailers that are subject to the FPLA. However, the Census data now lists retailers of soaps, detergents, and household cleaners separately from retailers of paper and related products (including paper towels, toilet tissue, wraps, bags, foils, etc.), enabling revised calculations to reduce overlap and double-counting of retailers.

Associated labor costs: $158,985,540

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff estimates that the FPLA disclosure requirements consist of an estimated hour of managerial and/or professional time per covered entity (at an estimated average hourly rate of $55) plus two hours of specialized clerical support[4] (at an estimated average hourly rate of $25), and seven hours of clerical time per covered entity (at an estimated average hourly rate of $15), for a total of $158,985,540 ($210 blended labor cost per covered entity x 757,074 entities).

13. Estimated Capital/Other Non-Labor Costs

Total capital and start-up costs are de minimis. For many years, the packaging and labeling activities that require capital and start-up costs have been performed by covered

[3] To the extent that the FPLA-implementing regulations require sellers of consumer commodities to keep records that substantiate "cents off," "introductory offer," and/or "economy size" claims, staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates. "Burden," for OMB purposes, excludes such items. See 5 C.F.R. § 1320.3(b)(2).

[4] "Specialized clerical support" consists of graphic design specialists, working by computer to design the appearance and layout of product packaging, including appropriate display of the disclosures required by the FPLA regulations.

entities in the ordinary course of business independent of the FPLA and its implementing regulations. Similarly, firms provide in the ordinary course of business the information that the statute and regulations require be placed on packages and labels.

14. Estimate of Cost to Federal Government

Staff estimates that a representative year's cost of administering the regulations' requirements during the three-year clearance period sought will be approximately $37,000. This represents attorney and investigator costs, and includes employee benefits.

15. Program Changes or Adjustments

The revised burden hour estimates reflect an increase in the estimated number of affected entities. Staff's labor cost estimate, which is a function of burden hours (and hours, in turn, being partly a function of the population affected), is accordingly increased.

16. Statistical Use of Information

There are no plans to publish any information for statistical use.

17. Display of Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the Certification for Paperwork Reduction Act Submissions

Not applicable.