

**Supporting Statement for Information Collection Provisions
Contained in the Rules 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. In Section 2 of the Act, Congress determined 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 rules requiring that labels for all “consumer commodities”¹ disclose the package’s net contents, identity of commodity, and name and place of business of the product’s manufacturer, packer, or distributor. The Act authorizes additional rules 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 FPLA rules (16 C.F.R. Parts 500-503) took effect. The FPLA rules prescribe 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 rules 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 rules closely parallel the statute’s requirements, and provide detailed guidance on the manner and form of disclosures the Act requires. The FTC enforces these rules for household “consumer commodities.” The Food and Drug Administration (“FDA”) administers the FPLA for food, drugs, cosmetics, and medical devices. The FTC administers the FPLA for other “consumer commodities” that are consumed or expended in the household. The U.S. Department of Agriculture is responsible for rules covering meat and poultry products.

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>.

2. Use of the Information

Consumers use the information required for disclosure by these rules to make informed product value comparisons and purchasing decisions.

3. Consideration to Use Improved Information Technology to Reduce Burden

Firms subject to these rules are free to use improved information disclosure and package printing technologies to reduce the burden of complying. In the many years since the rules took effect, covered businesses 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.

Information about consumer commodities is most valuable at the point of sale, and labeling is the method most closely tailored to consumer shopping behavior. As such, providing an option for electronic disclosure in lieu of labeling 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 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 rules are limited to information that a company would receive in the ordinary course of business. For the most part, compliance with the FPLA rules 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 rules is consistent with the OMB guidelines stated in 5 C.F.R. § 1320.5(d)(2).

8. Consultation Outside the Agency

At the FTC, primary responsibility for implementing the FPLA rules is delegated to the Bureau of Consumer Protection, Division of Enforcement, which has continuous informal contact with industry members who need guidance concerning compliance requirements. Moreover, the Commission systematically reviews its rules to ensure that the rules continue to achieve their intended goals without unduly burdening commerce. These reviews are conducted on a ten-year schedule, with review of the FPLA rules scheduled next for 2013. 76 Fed. Reg. 41,150 (July 13, 2011). Additionally, through its triennial pursuit to renew OMB clearance for the disclosure provisions of the FPLA rules, the Commission seeks, in accordance with 5 C.F.R. § 1320.8(d), public comment on the practical utility of those provisions, ways to improve the quality, utility, and clarity of required labeling, as well as comments on the accuracy of and methodology underlying the FTC’s burden estimates. The Commission sought such comment most recently with its latest PRA clearance request for these rules. See 76 Fed. Reg. 70,451 (November 14, 2011). No comments were received. Consistent with 5 C.F.R. § 1320.12(c), the Commission 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: 8,574,900 total burden hours (solely relating to disclosure³)

The major information collection burden of the FPLA rules comes from the Act’s consumer commodity labeling requirements. Accurately estimating the number of respondents subject to these rules and annual burden work hours caused by these rules present several

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 recordkeeping customarily maintained in the normal course of business. See 5 C.F.R. § 1320.3(b)(2).

challenges. 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 857,490 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 8,574,900 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 rules. 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. The Census data, however, now list 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: \$186,932,820

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 \$54) plus two hours of specialized clerical support⁴ (at an estimated average hourly rate of \$26), and seven hours of clerical time per covered entity (at an estimated average hourly rate of \$16), for a total of \$186,932,820 (\$218 blended labor cost per covered entity x 857,490 entities).⁵

13. Estimated Capital/Other Non-Labor Costs

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 entities in the ordinary course of business independent of the FPLA and its implementing rules. Similarly, firms provide in the ordinary course of business the information that the statute and rules require

⁴ “Specialized clerical support” consists of computer support personnel who design the appearance and layout of product packaging, including appropriate display of the disclosures required by the FPLA regulations.

⁵ Based generally on the National Compensation Survey: Occupational Earnings in the United States, 2010, U.S. Department of Labor, U.S. Bureau of Labor Statistics (May 2011) (“BLS National Compensation Survey” (citing the mean hourly earnings for management occupations, legal occupations/lawyers, and assorted clerical positions) available at <http://www.bls.gov/ncs/ncswage2010.html>. Clerical estimates are derived from the above source data, applying roughly a mid-range of mean hourly rates for potentially applicable clerical types, e.g., computer operators, data entry and information processing workers.

be placed on packages and labels.

14. Estimate of Cost to Federal Government

Staff estimates that a representative year's cost of administering the rules' requirements during the three-year clearance period sought will be approximately \$38,000. This represents attorney and investigator costs, and includes employee benefits.

15. Program Changes or Adjustments

The revised burden hour estimate reflects an increased number of affected entities, thus accounting for an increase of cumulative burden hours (the estimate of ten hours per respondent, however, remains unchanged). Estimated labor costs increase, in turn, for this effect paired with an increased blended hourly labor rate estimate used in staff's calculations.

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.