

Federal Trade Commission
Supporting Statement
Rules Implementing the Fair Packaging and Labeling Act
16 C.F.R. Parts 500-503
(OMB Control Number: 3084-0110)

This is a request for approval of a three-year extension of an existing clearance. The Fair Packaging and Labeling Act regulations, 16 CFR parts 500-503 (“FPLA Rules”), which implement Section 4 of the Fair Packaging and Labeling Act, 15 U.S.C. 1451 *et seq.* (“FPLA” or “Act”), require manufacturers, packagers, and distributors of “consumer commodities” to comply with certain disclosure requirements pertaining to the marking and labeling of consumer commodities. There is no change in the information collection.

Summary of Changes from Previously Approved Collection

There are no program changes or adjustments for this renewal period. The only changes are updates to burden estimates and wage data based on updated BLS data:

- *Number of Respondents*: Based on updated industry data, FTC staff has increased their estimate of covered entities from 683,221 to 743,658 for this renewal period.
- *Burden hours*: FTC staff’s estimate of annual burden per respondent remains unchanged for this renewal period, but due to the increase in the number of covered entities, the overall annual hours burden for this renewal increased from 6,832,210 to 7,436,580 hours.
- *Labor Costs*: FTC staff has calculated labor costs by multiplying the annual burden hours estimate by relevant hourly labor costs derived from BLS wage data. Due to the increase in the annual hours burden estimate and the use of updated BLS wage data, the estimated annual labor costs has changed from \$163,973,040 to \$188,799,893 for this renewal period.

1. Necessity for Collecting the Information

The FPLA was enacted 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

¹ The term consumer commodity or 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

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.

The FPLA Rules require packages or labels for consumer commodities to be labeled with: (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 CFR 500.3-500.26.

The FPLA Rules closely parallel the statute's requirements, and provide detailed guidance on the manner and form of the disclosures the Act requires. The FTC administers the FPLA for "consumer commodities" that are consumed or expended in the household and that are not otherwise excluded from FTC jurisdiction. The Food and Drug Administration ("FDA") administers the FPLA for food, drugs, cosmetics, and medical devices. The U.S. Department of Agriculture is responsible for rules governing meat and poultry products.

2. Use of the Information

The FPLA Rules ensure that consumers have adequate information to make informed product value comparisons and purchasing decisions.

3. Consideration to Use Improved Information Technology to Reduce Burden

Firms subject to the FPLA Rules are free to use improved information disclosure and package printing technologies to reduce the burden of complying. In the years since the Rules initially took effect, covered businesses have integrated the process of compliance into routine packaging operations. Compliance requirements are reasonably well understood throughout the industry, and the FTC has not taken formal enforcement actions. State officials responsible for weights and measures activities play a central role in ensuring 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.

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 CFR 500.2(c). For the precise scope of the term's coverage, see 16 CFR 500.2(c); 503.2; 503.5.

4. Efforts to Identify Duplication/Availability of Similar Information

Although FPLA enforcement is shared among the FTC, FDA, and the Department of Agriculture for the entities subject to their jurisdiction, there is no duplication of compliance requirements for any product 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. Nonetheless, FTC staff estimates that compliance with the Rule poses only a limited burden for covered entities including small businesses, and the FTC regularly provides guidance to affected entities to promote compliance with the FPLA Rules.

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 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

Consistent with 5 CFR 1320.8(d), the Commission recently sought public comment on the Paperwork Reduction Act (44 U.S.C. Chapter 35) (“PRA”) aspects of the Rules. *See* 88 FR 59925 (Aug. 30, 2023). No relevant comments were received. The Commission is providing a second opportunity for public comment while seeking OMB approval to extend the existing PRA clearance for the Rules. Consistent with 5 CFR 1320.12(c), the Commission is seeking comment a second time in conjunction with this submission.

9. Payments or Gifts to Respondents

Not applicable. The Rules do not provide for any payments or gifts to respondents.

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

Not applicable. The FPLA Rules do not require the submission of any information of a sensitive or confidential nature. The requirements for which the Commission seeks OMB clearance do not involve disclosure of confidential respondent or customer information but,

rather, the labeling of products with information regarding package identity, net quantity of contents, and the name and location of the company responsible for the product to allow consumers to make informed product value comparisons and purchasing decisions.

12. Estimated Information Collection Burden

FTC staff estimates there are approximately 743,658 retailers, wholesalers, and manufacturers that sell consumer commodities that are subject to the FPLA Rules' labeling requirements.²

Burden Hours: 7,436,580 hours.

FTC staff estimates that covered entities spend approximately 10 hours per year to comply with the FPLA Rules' labeling requirements. As a result, the FTC estimates that the total burden hours attributable to FTC requirements is 7,436,580 hours (743,658 respondents × 10 hours).

Labor Costs: \$188,799,893.

FTC staff derives labor costs by applying estimated hourly cost figures to the burden hours described above. Commission staff estimates the hours spent to comply with the Rule's labeling requirements will break down as follows: 1 hour of managerial and/or professional time per covered entity, at an hourly wage of \$59.07,³ 2 hours of graphic design support, at an

² FTC staff based this estimate on a combination of U.S. Census Bureau ("Census") data and information from the North American Industry Classification System ("NAICS"). FTC staff identified categories of retailers, wholesalers, and manufacturers under the FTC's jurisdiction that supply consumer commodities as defined in the FPLA Rules. FTC staff estimated the number of retailers (317,973) based on 2021 Census data compiling NAICS subsector codes 445, 452, and 453, respectively, for food and beverage stores, general merchandise stores, and miscellaneous store retailers. *See* <https://data.census.gov/table?n=445:452:453&tid=CBP2021.CB2100CBP&nkd=EMPSZES~001.LFO~001>. FTC staff estimated the number of wholesalers (354,180) using 2021 Census data concerning the number of firms covered by NAICS subset code 42 for merchant wholesalers, except manufacturers' sales branches and offices (NAICS subsector code 425). *See* <https://data.census.gov/table?n=42&tid=CBP2021.CB2100CBP&nkd=EMPSZES~001.LFO~001> (reflecting that NAICS subset code 42 covers 390,842 entities); <https://data.census.gov/table?n=425&tid=CBP2021.CB2100CBP&nkd=EMPSZES~001.LFO~001> (reflecting that NAICS subsector code 425 covers 36,662 entities). FTC staff estimated the number of covered manufacturers (71,505) by compiling the estimated number of manufacturing entities covered by NAICS codes 321999, 322220, 322299, 324191, 324199, 325520, 3256, 325992, 325998, 326111, 326130, 326140, 326199, 327910, 331315, 339999. *See* <https://www.naics.com/six-digit-naics/?v=2022&code=31-33>.

³ Based on the mean hourly wage rate for "General and Operations Managers" (\$59.07), available from Bureau of Labor Statistics, Economic News Release, April 25, 2023, Table 1, "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2022" ("BLS Table 1"), available at <https://www.bls.gov/news.release/ocwage.htm>.

hourly wage of \$31.01,⁴ and 7 hours of clerical time per covered entity, at an hourly wage of \$18.97,⁵ for a total of \$188,799,893⁶ (\$253.88 blended labor cost per covered entity × 743,658 entities).

13. Estimated Capital/Other Non-Labor Costs

FTC staff believes that the FPLA Rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and equipment already (e.g., offices and computers) for the information collections discussed above.

14. Estimate of Cost to Federal Government

FTC staff estimates that a representative year’s cost of administering the FPLA Rules’ requirements during the three-year clearance period sought will be approximately \$40,000. This represents attorney and investigator costs, and includes employee benefits.

15. Program Changes or Adjustments

There are no program changes or adjustments. The only changes for this renewal period are updates to the number of entities covered by the FPLA Rules based on more recent industry data and updates to relevant Bureau of Labor Statistics wage data.

Based on a review of relevant industry data, FTC staff have estimated an overall increase in the number of entities subject the FPLA Rules for this renewal period. As described above, the Commission estimates for this renewal period that there are approximately 743,658 retailers, wholesalers, and manufacturers that sell consumer commodities that are subject to the FPLA Rules’ labeling requirements.⁷ This represents an increase of 60,437 from FTC staff’s estimate of 683,221 in 2021. This increase in covered entities results in an increase in the estimated annual hours burden for the renewal period. In addition, FTC staff updated the relevant occupational wage rates associated with compliance with the FPLA Rules’ requirements using updated BLS wage data for this renewal period.

16. Statistical Use of Information

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

⁴ This wage estimate consists of work time for graphic designers who design the appearance and layout of product packaging, including the appropriate display of the disclosures required by the FPLA Rules. The corresponding wage estimate is based on mean hourly wages for “Graphic designers” (\$31.01). See BLS Table 1.

⁵ See *id.* The clerical wage estimate is based on the mean hourly wages for “data entry and information processing workers” (\$18.97).

⁶ Rounded from \$188,799,893.04.

⁷ See *supra* note 2.

17. Display of Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the Certification for Paperwork Reduction Act Submissions

The FTC certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), and is not seeking an exemption to these certification requirements.