

FEDERAL TRADE COMMISSION**16 CFR Part 304****Request for Comments Concerning Rules and Regulations Under the Hobby Protection Act**

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission requests public comments on its Rules and Regulations Issued Under the Hobby Protection Act ("the Rule"). The Commission, as a part of its systematic review of all current Commission regulations and guides, requests comments about the overall costs, benefits, and regulatory and economic impact of the Rule. Further, the Commission, as mandated by the Regulatory Flexibility Act, 5 U.S.C. 601, seeks information about the impact of the Rule on small business firms.

DATES: Written comments will be accepted until May 27, 1997.

ADDRESS: Comments should be identified as "16 CFR Part 304—Comment" and sent to: Secretary, FTC, Room H-159, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Robert E. Easton, Special Assistant, Division of Enforcement, Bureau of Consumer Protection, FTC, Washington, D.C. 20580, (202) 326-3029.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review its rules and guides periodically to seek information about their costs and benefits and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission. Where appropriate, the Commission will combine such periodic general reviews with reviews seeking information about the economic impact of the rule on small business firms as required by the Regulatory Flexibility Act.

A. Background

On November 29, 1973, Congress passed the Hobby Protection Act ("Act"), 15 U.S.C. 2101-2106. The Act requires manufacturers and importers of "imitation political items"¹ to mark "plainly and permanently" such items with the "calendar year" such items

were manufactured. 15 U.S.C. 2101(a). The Act also requires manufacturers and importers of "imitation numismatic items"² to mark "plainly and permanently" such items with the word "copy." 15 U.S.C. 2101(b). The Act further provides that the Commission is to promulgate regulations for determining the "manner and form" imitation political items and imitation numismatic items are to be permanently marked with the calendar year of manufacture or the word "copy." 15 U.S.C. 2101(c).

Pursuant to the Act, in 1975 the Commission issued Rules and Regulations under the Hobby Protection Act, 16 CFR Part 304. The Rule tracks the definitions of terms used in the Act and implements the Act's "plain and permanent" marking requirements by establishing the sizes and dimensions of the letters and numerals to be used, the location of the marking on the item, and how to mark incusable and nonincusable items. In 1988, the Rule was amended to provide additional guidance on the minimum size of letters for the word "copy" as a proportion of the diameter of the diameter of coin reproductions.³ 53 FR 38942 (1988).

In preparation for the reviews of the Rule, staff undertook a limited inquiry to ascertain the degree of compliance with the Rule. Based on this inquiry, it appears that there is a high level of compliance with the Rule, both as to imitation political items and imitation numismatic items.

B. Issues for Comment

The Commission solicits written public comments on the following questions:

(1) Do there continue to be reasons for legislative and regulatory intervention in the sale and marking of imitation political items and imitation numismatic items, but not for other items collected by hobbyists (e.g., stamps)? If so, please explain.

(a) What benefits has the Rule provided to purchasers of the products or services affected by the Rule?

(b) Has the Rule imposed costs on purchasers?

(2) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?

(a) How would these changes affect the costs the Rule imposes on firms subject to its requirements?

(3) What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements?

(a) Has the Rule provided benefits to such firms?

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

(a) How would these changes affect the benefits provided by the Rule?

(5) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

(7) What significant burdens or costs, including costs of compliance, has the Rule imposed on small firms subject to its requirements?

(a) How do these burdens or costs differ from those imposed on larger firms subject to the Rule's requirements?

(8) To what extent are the burdens or costs that the Rule imposes on small firms similar to those small firms would incur under standard and prudent business practices?

(9) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on small firms?

(a) How would these changes affect the benefits of the Rule?

(b) Would such changes adversely affect the competitive position of larger firms?

(10) The Rule currently mandates the minimum sizes for the calendar year to be marked on imitation political items and for the word "copy" to be marked on imitation numismatic items.

(a) Should the Commission amend the Rule to replace the mandated minimum sizes with a performance based standard (e.g., clear and prominent disclosure)?

(b) If so, what should the performance based standard be?

(c) What would be the costs and benefits of the proposed performance based standard?

List of Subjects in 16 CFR Part 304

Hobbies, Labeling, Trade practices.
Authority: 15 U.S.C. 41-58.

¹ An imitation political item is "an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item." 15 U.S.C. 2106(2).

² An imitation numismatic item is "an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item." 15 U.S.C. 2106(4).

³ Prior to the amendment, if a coin were too small to comply with the minimum letter size requirements, the manufacturer or importer had to individually request from the Commission a variance from those requirements. Because imitation miniature coins were becoming more common, the Commission determined that it was in the public interest to allow the placing of the word "copy" on miniature imitation coins in sizes that could be reduced proportionately with the size of the item.

By direction of the Commission.

Donald S. Clark,

Secretary.

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16 CFR Part 403

Deceptive Use of "Leakproof," "Guaranteed Leakproof," Etc., as Descriptive of Dry Cell Batteries

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the "FTC" or "Commission") proposes to commence a rulemaking proceeding to repeal its Trade Regulation Rule on Deceptive Use of "Leakproof," "Guaranteed Leakproof," Etc., as Descriptive of Dry Cell Batteries ("the Dry Cell Battery Rule" or "the Rule"), 16 CFR Part 403. The Commission is soliciting written comments, data, and arguments concerning this proposal. The Commission also is requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides.

DATES: Written comments must be submitted on or before April 24, 1997.

ADDRESSES: Written comments should be identified as "16 CFR Part 403 Comment" and sent to Secretary, Federal Trade Commission, Room 159, Sixth St. and Pennsylvania Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, FTC, Bureau of Consumer Protection, Division of Enforcement, Sixth St. and Pennsylvania Ave., N.W., Washington, DC 20580, (202) 326-3038.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is being published pursuant to Section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7 *et seq.*, and 5 U.S.C. *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulations 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).

On May 20, 1964, the Commission promulgated a trade regulation rule that

states that in connection with the sale of dry cell batteries in commerce, the use of the word "leakproof," the term "guaranteed leakproof," or any other word or term of similar import, or any abbreviation thereof, in advertising, labeling, marking or otherwise, as descriptive of dry cell batteries, constitutes an unfair method of competition and an unfair or deceptive act or practice in violation of section 5 of the FTC Act (16 CFR 403.4). This Rule was based on the Commission's finding that, despite efforts by dry cell battery manufacturers to eliminate electrolyte leakage, battery leakage and damage therefrom occurs from the use to which consumers ordinarily subject dry cell batteries.

The Rule does not prohibit manufacturers or marketers from offering or furnishing guarantees that provide for restitution in the event of damage from battery leakage, provided no representation is made, directly or indirectly, that dry cell batteries will not leak (16 CFR 403.5). The Rule further provides that in the event any person develops a new dry cell battery that he believes is in fact leakproof, he may apply to the Commission for an amendment to the Rule, or other appropriate relief (16 CFR 403.6).

The Commission conducted an informal review of industry practices by examining the advertising, labeling and marking of dry cell batteries available for retail sale. The products, packaging and advertising inspected contained no presentations that the batteries so described were leakproof. The Commission's review, therefore, indicated general compliance with the Rule's provisions. Moreover, the Commission has no record of receiving any complaints regarding non-compliance with the Rule, or of initiating any law enforcement actions alleging violations of the Rule.

Additionally, the Commission's review indicated general voluntary compliance by the industry with the requirements of American National Standards Institute ("ANSI") Standard C18.1M-1992 Dry Cells and Batteries—Specifications. The ANSI standard contains specifications for dry cell batteries, and requirements for labeling the products and their packages. The ANSI standard requires the following information to be printed on the outside of each battery (when necessary, the standard permits some of this information to be applied to the unit package): (1) The name or trade name of the manufacturer; (2) the ANSI/National Electronic Distributors Association number, or some other identifying designation; (3) year and month, week

or day of manufacture, which may be a code, or the expiration of a guarantee period, in a clear readable form; (4) the nominal voltage; (5) terminal polarity; and (6) warnings or cautionary notes where applicable.¹

The ANSI standard recommends that dry cell battery manufacturers and sellers include on their products and packages several battery user guidelines and warnings that are relevant to this proceeding. They are: (1) although batteries basically are trouble-free products, conditions of abuse or misuse can cause leakage; (2) failure to replace all batteries in a unit at the same time may result in battery leakage; (3) mixing batteries of various chemical systems, ages, applications, types or manufacturers may result in poor device performance and battery leakage; (4) attempting to recharge a non-rechargeable battery is unsafe because it could cause leakage; (5) reverse insertion of batteries may cause charging, which may result in leakage; (6) devices that operate on either household current or battery power may subject batteries to a charging current, which may cause leakage; (7) do not store batteries or battery-powered equipment in high-temperature areas; and (8) do not dispose of batteries in fire.²

At a minimum, each dry cell battery and battery package inspected by Commission staff informed consumers that the batteries may explode or leak if recharged, inserted improperly, disposed of in fire, or mixed with different battery types. Based on the foregoing, the Commission has tentatively concluded that industry members that comply with the standard's point-of-sale disclosure requirements, of necessity, also are in compliance with the Rule.

Part B—Objectives

Based on the review described above, the Commission has tentatively determined that the Rule is no longer necessary.³ the objective of this notice is

¹ See section 8.1 of ANSI Standard C18.1M-1992.

² See section 7.5 of ANSI Standard C18.1M-1992.

³ Repealing the Dry Cell Battery Rule would eliminate the Commission's ability to obtain civil penalties for any future misrepresentations that dry cell batteries are leakproof. The Commission, however, has tentatively determined that repealing the Rule would not seriously jeopardize the Commission's ability to act effectively. Any significant problems that might arise could be addressed on a case-by-case basis under Section 5 of the FTC Act, 15 U.S.C. 45, either administratively or through Section 13(b) action, 15 U.S.C. 53(b), filed in federal district court. Prosecuting serious misrepresentations in district court allows the Commission to obtain injunctive relief as well as equitable remedies, such as redress or disgorgement.