

# VOLUNTARY METRIC LABELING



**NIST**  
National Institute of  
Standards and Technology  
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# THE METRIC SYSTEM IS THE PREFERRED MEASUREMENT SYSTEM FOR TRADE AND COMMERCE IN THE UNITED STATES AND AROUND THE WORLD

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The United States adopted the metric system<sup>1</sup> for use in trade and commerce in 1866. In 1975 Congress adopted the Metric Conversion Act declaring that the transition to the metric system would be voluntary. In 1988 Congress declared that the metric system was the preferred system of measurement for trade and commerce for this country but it failed to eliminate all of the legal barriers to its use. In 1992 Congress amended the Fair Packaging and Labeling Act (FPLA) to require metric units on packaged goods so consumers would become familiar with those quantities. Under the current FPLA,<sup>2</sup> the net quantity of contents declarations on packages of consumer goods must include both inch-pound and metric units (“dual-units” labeling). The purpose of the proposed amendment to FPLA that is shown below is to give packagers the option of displaying only metric units in the net quantity of contents statements on packages. The proposal includes a provision to allow the Secretary of Commerce to provide national coordination of industry conversion on a sector by sector basis to ensure uniformity. The proposal would allow packagers to continue to also display inch-pound units on packages indefinitely.

Prior to 1992, the FPLA required a declaration of quantity to be in inch-pound units as a dual quantity statement. This meant that a package had to include both ounces and the largest whole unit (e.g., 32 ounces [2 lb]) in the net quantity statement, and ounces had to be primary or listed first. The 1992 amendment dropped the dual quantity declaration and instead required both inch-pound and metric units be shown in the largest whole unit, with either declaration appearing first. The FPLA was amended in 1992 to require that metric units be displayed on packages. The purpose of the change was to familiarize consumers with metric units so that they could learn to equate familiar quantities to the metric units of measure. Some manufacturers have included metric units on their packages for more than 30 years, especially on products that they intend to sell in other countries. The metric units have proven informative and have helped consumers learn to relate metric quantities to the equivalent inch-pound quantities.

The FPLA and other Federal laws and regulations govern the labeling requirements for most consumer products; however, many products fall only under state laws.<sup>3</sup> In 1999, the National Conference on Weights

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<sup>1</sup> In 1960 the metric system was renamed the International System of Units (SI) by the General Conference on Weights and Measures. In the U.S. it is interpreted or modified by the Secretary of Commerce. [See U.S. Weights and Measures Law - United States Code - Title 15, Chapter 6, Subchapter II Metric Conversion and NIST Special Publication 814 - Metric System of Measurement; Interpretation of the International System of Units for the United States or subsequent revisions.] These publications are available at <http://www.nist.gov/metric>.

<sup>2</sup> (15 U.S.C. §§ 1451-1461).

<sup>3</sup> Some of the products that are not covered by the FPLA, but are under the jurisdiction of the states: automotive products, such as motor oil and cleaning and polishing chemicals; greeting cards; school supplies; bottled gas for heating or cooking; hardware; sewing accessories; Christmas light sets; ink; small arms ammunition; cigarette lighters; lawn and garden supplies; souvenirs; clothing and other textiles; magnetic recording tape; stationery and writing supplies; durable goods; paints and kindred products; threads; gift ties and tapes; pet care supplies; tools; gift wraps; safety flares; toys; safety pins; and typewriter ribbons. **Other exceptions:** the Federal Trade Commission’s regulations under the FPLA do not apply to non-consumer packages, which are those intended for industrial or institutional use, whereas labeling regulations issued by the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act may apply to these types of packages. Labeling requirements for alcohol (including liquors, wine, and beer) and for tobacco are under

and Measures (NCWM) amended its Uniform Packaging and Labeling Regulation (UPLR)<sup>4</sup> to allow packages not subject to Federal regulations to be labeled with metric units. A change in the FPLA and state labeling requirements will enable U.S. firms that do business in Canada, Mexico, the European Union (EU), and other markets to use a global package labeled in a manner that is compliant in all markets.

The NCWM is committed to working towards harmonization of laws and regulations related to legal metrology, while it also works to ensure equity between sellers and consumers and fair competition in the marketplace. The NCWM has eliminated barriers to the use of metric units in trade and commerce in all of its model laws and regulations<sup>5</sup> so that the marketplace is free to use metric units when consumers and business decide to change. Today, under state and local laws, all scales, gas pumps and other weighing and measuring instruments used in trade and commerce can be calibrated to weigh or measure using the metric system. Also, unit pricing for products sold by weight can be by the price per kilogram or price per 100 grams (e.g., if a product costs \$7.69 per pound its unit price in metric units would be shown as \$16.95 per kilogram or \$1.69 per 100 grams).<sup>6</sup>

The marketplace is the best judge of when metric labeling is appropriate. Since January 1, 2000, the UPLR has allowed metric quantity declarations on consumer packages but has allowed metric labeling on non-consumer packages (those packages marked for wholesale and industrial trade) for more than 40 years. As the map in Figure 1 shows, 48 states report that they permit metric labeling on consumer packages. The two remaining states are Alabama and New York. An official in the State of New York has indicated that his state it is in the process of revising their regulations to permit metric labeling. Recently an official representing the state of Alabama expressed interest in amending its regulations to permit metric only labeling.

### **Metric only packages are in the marketplace**

Changes in the marketplace have increased consumer familiarity and acceptance of metric units on retail packages. Since 1992, when the FPLA was revised to require metric units, metric units have been used extensively on packages to provide net quantity, nutrition and health related information. Metric units are also used with prescription and over the counter medicines, vitamin supplements, wine, distilled spirits and other consumer products. In 2008, NIST Weights and Measures Division conducted a retail packaging labeling study in a wide variety of retail stores in Kansas, Maryland, and Texas. This study revealed the use of only metric units on more than 190 different consumer products.<sup>7</sup> While some of the products with metric only units are not subject to the FPLA, many of these products are subject to the FPLA and they are offered for sale in violation of its requirements. The fact that retailers apparently unknowingly sell some products

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the jurisdiction of the Treasury Department's Alcohol and Tobacco Tax and Trade Bureau; insecticides, fungicides, and rodenticides are under the jurisdiction of the Environmental Protection Agency; and the labeling of meat and poultry products is controlled by the United States Department of Agriculture.

<sup>4</sup> See the Uniform Packaging and Labeling Regulation at <http://ts.nist.gov/WeightsAndMeasures/Publications/H130-09.cfm> on the Internet.

<sup>5</sup> For scales and other weighing and measuring devices see NIST Handbook 44 "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" at <http://www.nist.gov/owm> on the Internet. For packaging and labeling and other regulations see the Uniform Packaging and Labeling Regulation in NIST Handbook 130 "Uniform Laws and Regulations in the areas of legal metrology..." see <http://www.nist.gov/owm>.

<sup>6</sup> A copy of a presentation by the NCWM is available at <http://www.nist.gov/metric> on the Internet.

<sup>7</sup> The NIST conducted marketplace assessment of package labeling included reviews of the labels of more than one-thousand consumer packages in a wide variety of retail stores and included food and non-food products. Approximately 17 % of the approximately 1200 retail packages inspected for compliance with the Uniform Packaging and Labeling Regulation in NIST Handbook 130 "Uniform Laws and Regulations..." and the FPLA were found to have only metric units.

labeled in violation of a federal law, and that some consumers are buying and using them without complaint demonstrates that the marketplace accepts metric only packaging and that the current dual-unit requirement in FPLA should be eliminated.



*Figure 1. States allowing metric labeling December 1, 2009*

### **European Union to Review Its Metric Directive in 2018**

A 2009 European Union (EU) Directive<sup>8</sup> requires metric units be used on all packages and permits supplementary declarations of inch-pound and U.S. customary units. The EU will review its policy on supplementary units in 2018. At that time the EU can maintain the status quo or once again set a deadline for mandatory use of only metric units. Another option would be for the EU to adopt a policy that would allow the display of supplementary units indefinitely. The third option is preferable because it would allow consumers to drive metrication and allow industry to increase metric use as it innovates. It is more likely that the EU will adopt the third option if the FPLA is amended to permit metric labeling. Even though it now appears that the EU will allow the use of supplementary units indefinitely the Commission has announced that it will continue to strongly pursue, in the context of its third country trade relations, including the Transatlantic Economic Council, the acceptance in the U.S. marketplace of products labelled only in the units of the International System of Units (SI).

### **Japan Asks the United State to Increase Use of the Metric System**

The Government of Japan (GOJ) has repeatedly raised the metric system as an issue in talks with the U.S. Trade Representative. According to the GOJ the dialogue of the Regulatory Reform and Competition Policy Initiative (“Regulatory Reform Initiative”) under the “Japan-United States Economic Partnership for Growth

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<sup>8</sup> The EU Directive on measurement units was published in the May 7, 2009 edition of the Official Journal of the European Union and can be viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:114:0010:0013:EN:PDF>.

("Partnership")" established at the Japan-United States summit meeting on June 30, 2001, deepened the bilateral economic relationship through harmonizing regulations and systems of the two countries. It has also contributed to the economic growth of both countries by reducing unnecessary regulations, strengthening competition, and improving market access.

Japan has raised the limited use of the metric system in the United States as a trade issue because the metric system was adopted as the international standard unit system by the International Organization for Standardization (ISO) and other international standard-setting organizations for use in developing international standards and specifications. While most countries use the metric system (The International System of Units (SI)), the United States continues to allow the units of the yard and pound, despite legalizing the metric system in 1866 and its accession to the Meter Convention in 1875. According to Japan the limited acceptance of the SI in the United States not only causes inconveniences but poses obstacles in international trade and many lost opportunities for simplification and efficiency.

The Government of Japan has asserted that given that the Agreement on Technical Barriers to Trade (TBT) recommends reducing technical barriers to trade by adopting international standards, the failure of the United States to aggressively promote the metric system is not in accordance with the World Trade Organization (WTO) agreements, including the TBT Agreement. Consequently, the Government of Japan would welcome an amendment to the FPLA, and it has urged the Government of the United States to ensure thorough adoption of the metric system in both the government and private sectors of the United States. The Government of Japan has also encouraged the United States to establish initiatives to increase public understanding and acceptance of the metric system.

### **Other Trading Partners**

While other countries allow inch-pound units to appear on packages that come from the United States, the governments in these countries want to change their laws to require metric only to move their economies fully to the metric system. Correspondence from the governments of Japan and New Zealand (available at <http://www.nist.gov/metric>) shows broad international support for metric labeling and indicates that U.S. exporters and importers will find it easier to buy and sell goods in other markets if they are labeled with metric units.

Closer to home, it is important to note that most of the countries in this hemisphere (e.g., Canada, Mexico, and the remainder of Central and South America) also require metric units on consumer packages, but permit inch-pound units to be shown as supplementary information. The governments of the Americas are working through the Inter-American Metrology System (SIM)<sup>9</sup> to identify and resolve labeling conflicts. Some of these issues include the use of metric units, language differences, and other variations in labeling requirements from one country to another. It is the view of legal metrology officials around the world that allowing only metric units to be used on labels will reduce clutter and may help to improve consumer understanding of quantity and other information.

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<sup>9</sup> Please contact the Laws and Metric Group for a copy of the "Survey on Package Labeling for the Inter-American Metrology System."



## HOW VOLUNTARY METRIC LABELING WILL BE IMPLEMENTED: CONCERNS AND BENEFITS

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Christopher Guay, Regulatory Fellow of Procter and Gamble, expressed his company's support for the initiative to allow metric labeling to be used on packages sold in the United States. Mr. Guay said that companies thrive by providing the best value to retailers and their customers. They need to be able to work with retailers and their customers to determine when and how to use metric units on their company's products. He also stated current labeling regulations require redundant information to appear on packages and the result is that labels are becoming too cluttered to understand. At times, he said, "there is not enough room on labels to include other information consumers want and need."

He also presented examples of the net quantity of contents labels Procter and Gamble uses on the packages it produces for sale in the United States and Canada. These examples showed package labels overflowing with the required net quantity information, possibly confusing consumers more than informing them.<sup>10</sup> Mr. Guay also reported that consumers have indicated they do not like package labels that appear to overflow with net contents information in multiple languages. Much of the overflow of net content information is a direct result of the FPLA's dual-units requirements along with national requirements for use of multiple languages. The examples in the presentation show that labels could be simplified if manufacturers could use metric units only.

Procter and Gamble supports the proposed amendment because it will allow market forces to determine when companies switch to metric labeling, most likely on a product-by-product basis. Mr. Guay identified one option that manufacturers currently have in educating consumers and retailers about the relationships between inch-pound and metric quantities, which is to place the metric units either first on the label or in a larger type followed by inch-pound units. Mr. Guay believes that once the FPLA is amended, it would likely take several years for the change to have an everyday impact on packages in stores since manufacturers design packaging several years in advance. He expects little change immediately since the marketplace is very competitive and "we cannot afford to alienate our consumers!" As companies introduce products with metric units, sellers can use marketing and educational efforts to promote the new packaging. This type of outreach is commonly used by businesses to help customers accept new products or to introduce changes to existing brands. The outreach is often supported through customer service toll-free telephone lines and online access.

NIST will continue to develop labeling and advertising guidelines for metric packages; and it will also create educational materials to assist retailers, consumers and others to better understand metric units and to encourage consumers to use unit pricing and other available information to make value comparisons. The option to use metric units only in the net quantity of content declarations will also:

- Increase efficiencies for companies to market their products in international trade. Manufacturers will decide which method of labeling to use for both domestic and foreign markets based on the needs of their customers.

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<sup>10</sup> The Procter and Gamble presentation, which includes pictures of trilingual packages, is at <http://www.nist.gov/metric> on the Internet.



- Simplify labels and reduce confusion on products sold by volume in one market and by weight in another market (e.g., by eliminating the use of the inch-pound unit “ounce” for either volume or weight.)
- Reduce the space required for dual-unit labeling and free it up for other consumer information.

There is concern that consumers may not be able to make value-comparisons between similar products of various sizes if some manufacturers use the metric unit option and others use inch-pound units unless consumer information is provided in connection with the introduction of more metric packages. Consequently, coordinated action is needed to address this important issue.

Allowing metric products on the shelves alongside products with dual-unit labeling will continue to help consumers establish mental "reference points" of the metric quantities they use routinely. One of the goals of this collaborative effort will be to ensure that consumers are able to make value comparisons between products with dual-unit labeling and those labeled with only metric units. Another goal will be to explore ways to help consumers make value comparisons on a wider range of products where unit pricing information is not generally available and to promote uniform labeling and eliminate the use of incorrect symbols and improper quantity claims to ensure fair competition.

## WHAT WILL THE PROPOSED AMENDMENTS TO THE FAIR PACKAGING AND LABELING ACT (FPLA) ACHIEVE?

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Amending the FPLA as proposed below would give packagers greater flexibility to provide labeling information that meets the diverse needs of their customers. Package label declarations stated in metric units would be exempt from the current requirement that declarations of net content also include inch-pound units, allowing packagers to label their products with either metric units only, or with both metric and inch-pound units.

The proposed amendment to the FPLA would help achieve the following objectives.

- Enable consumers to use metric information to make value comparisons.
- Update labeling options allowing manufacturers to make labeling decisions based on knowledge of customer needs and the demands of their markets.
- Permit certain packagers, through increased labeling flexibility, to reduce production and packaging costs by producing fewer different labels for different markets.
- Permit packagers to continue to use existing packaging labeled with both inch-pound and SI units. This means that no producer, packager, or store would be required to take any action or incur any cost based on this amendment.
- Strengthen the ability of U.S. manufacturers to compete in the global marketplace.
- Enable the Secretary of Commerce to carry out a program of planning, coordination, and public education consistent with other national interests to coordinate voluntary use of metric units on packages. The information and education efforts may include:
  - educational programs through newspapers, magazines, radio, television, and other media and through collaborative efforts with industry, other Federal agencies and the Federal Trade Commission,
  - online and other training seminars for industry on metric usage and packaging and labeling,
  - distribution of consumer education materials, and
  - collaborations with retailers, consumers, trade associations and other organizations for coordination of metric conversion of packaged goods on a sector by sector basis.

Long-term benefits will result if the everyday use of the metric system increases so that industry and businesses gain efficiencies through the use of an internationally accepted and used system of measurement. Increased use of the metric system in the marketplace will reinforce the efforts of the Nation's schoolteachers who teach the metric system to millions of children. This is an issue worthy of attention according to one recent study by mathematics teachers who found that American students have difficulty using what they learn, stating that the "opportunity to experience the metric system in and out of school is a major factor."<sup>11</sup> As use of metric units grows in the marketplace, it may be appropriate for teachers to focus more of their curricula primarily on the metric system. It has been said more than once that math and measurement skills

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<sup>11</sup> Ta Taylor, P. Mark.; Simms, Ken. Kim, Ok-Kyeong. *Teaching Children Mathematics* v. 7 no. 5 (Jan. 2001) p. 282-287.

are a national resource that we must both enhance and use to keep America's technology and science the best in the world. To that end we believe this effort will return benefits beyond those listed above for businesses.

Perhaps one of the most well reasoned arguments for the United States to increase its use of the metric system was an editorial by Thomas G. Dolan, Editorial Page Editor for *Barron's* on November 25, 2002. In his editorial, entitled "Measure for Measure" he says, "there are few places in the economy where the government can actually legislate American efficiency. The system of weights and measures is one of them. Congress can and should convert the country to the metric system."<sup>12</sup>

### **Proving that Voluntary Metric Conversion Can Work**

Amending the FPLA to permit metric labeling will reinforce Congress's decision in 1975 to adopt a voluntary approach to metric conversion for the United States. Congress adopted the voluntary approach to allow the marketplace to decide when and where to implement the use of metric units. Voluntary conversion was a sound decision because it allows conversion to be efficient and at low cost because the changeover can be accomplished in sync with routine redesigns of packaging or with the introduction of new products. However, as long as there are legal or regulatory barriers to use of the metric system we will need to continue to expend resources to have them changed so voluntary conversion can work as intended and so the benefits described above can be realized.

#### *THE FAIR PACKAGING AND LABELING ACT.*

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The FPLA relates only to the net quantity of contents information on packages, goods, or commodities that are sold on the basis of weight or measure (i.e., it does not apply to such products such as appliance or electronic or industrial equipment that have contents sold by the quantity of their contents.) Labeling requirements for packaged goods are applied to packages based on who will be the ultimate consumer. There are two classifications of products: one class is "consumer" packages that are intended for sale in retail stores, such as food or department stores. The other class is "non-consumer" packages that are intended for sale in wholesale trade, such as a manufacturer who packages 25 kilogram bags of chemicals for sale to another manufacturer for use in producing another product. The FPLA requirements are not applicable to all packaged goods.

1. The FPLA requirements apply only to "consumer commodities," including:
  - a. Foods, drugs (except prescription), and cosmetics; and these are subject to the labeling regulations of the Food and Drug Administration.
  - b. Any other 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 (e.g., soaps and detergents, paper products, and waxes and polishes); and these are subject to the labeling regulations of the Federal Trade Commission.
2. The FPLA requirements do not apply to:
  - a. packages intended for export (unless they are also intended for sale in the U.S. marketplace),

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<sup>12</sup> Thomas G. Dolan, "Measure for Measure - It's time for the United States to join the world in using the metric system." *Barron's*. (Nov. 25, 2002) p. 35.

- b. meat or meat product, poultry or poultry product, and some packaged agricultural seed that are subject to the labeling regulations of the U.S. Department of Agriculture,
  - c. pesticides that are subject to the labeling regulations of the Environmental Protection Agency,
  - d. alcohol, beer, wine and tobacco or tobacco products that are subject to the labeling regulations of the Department of Treasury, and
  - e. all other products that fall under the jurisdiction of state and local regulations that are based on the Uniform Packaging and Labeling Regulation (UPLR), NIST Handbook 130, *Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality*.
3. Some products that can already be labeled with metric units of measurement.

The following packaged products currently may be labeled in metric-only units. Many of these products have been labeled with only metric units for more than 25 years.

- a. Wine and spirits (except for beer).
- b. Camera film, videotape, audiotape, and other imaging and audio media.
- c. Packages of seed with net contents of less than 225 grams.
- d. Consumer products not covered by the FPLA. The Uniform Packaging and Labeling Regulation (NIST Handbook 130), which the states adopt to regulate most consumer products not covered by the FPLA, states, "The requirements for statements of quantity in inch-pound units shall not apply to packages that bear appropriate SI units."
- e. Non-consumer packages of any product or commodity. This includes tens of thousands of different products and commodities bought and sold in wholesale trade. However, it does not include food, drugs, meat or poultry, pesticides, and some packaged agricultural seed.

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## PROPOSED AMENDMENTS TO THE FPLA TO ALLOW VOLUNTARY METRIC LABELING

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This section describes the proposed amendment to Sections 1453 and 1458 of the Fair Packaging and Labeling Act (FPLA) to allow voluntary metric labeling. These amendments would modify the FPLA to require packages to have net quantity of contents declarations in metric units, but would also allow inch-pound units to be declared indefinitely.

Nothing in the amendments should be construed to apply to unit pricing, advertising, recipes, nutrition labeling, other general pricing information, or to require changes in package sizes.

The complete text of the Fair Packaging and Labeling Act with the proposed amendments is shown in the next section. The clauses of Section 1453 that would be amended include: (a)(2), (a)(3)(A), (a)(5), and (a)(6).

Proposed amendments to: §1453 Requirements of Labeling; Placement, Form, and Contents of Statement of Quantity; Supplemental Statement of Quantity.

**i.**

**a. Amend (a)(2) by adding the text shown as underlined:**

(a)(2) The net quantity of contents (in terms of weight or mass, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label:

(A) using the most appropriate unit of the metric system of measurement and the inch-pound measurement equivalent, except as provided in paragraph (6) of this subsection; or

(B) using only the most appropriate units of the metric system of measurement.

**b. Amend (a)(2) by deleting the struck-through text:**

~~(a)(2) The net quantity of contents (in terms of weight or mass, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label, using the most appropriate units of both the customary inch/pound system of measure, as provided in paragraph (3) of this subsection, and except as provided in paragraph (3)(A)(ii) or paragraph (6) of this subsection, the SI metric system.~~

**ii. Amend (a)(3) (A) by adding the underlined text and deleting the struck-through text:**

(a)(3) The separate label statement of net quantity of contents appearing upon or affixed to any package:

(A) for those portions of the net quantity of contents statement using inch-pound units,

~~(ii) if on a random package, may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than three decimal places; and is not required to, but may include a statement in terms of the SI metric system carried out to not more than three decimal places.~~

iii. **Amend Section (a)(5) by inserting the underlined text as shown:**

(a)(5) For purposes of paragraph (3) (A) (ii) and paragraph (6) of this subsection, the term "random package" means a package which is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weight or mass, that is, packages with no fixed weight or mass pattern.

iv. **Revise (a)(6) by inserting the underlined text as shown:**

(a)(6) The net quantity of contents statement for foods that are packaged at the retail store level and for random packages shall be expressed using one of three possible regimes: using only the most appropriate units of the metric system, using only the most appropriate inch-pound units, or using both metric units and inch-pound units.

v. **Delete the struck-through text in (a)(6) as shown:**

~~(a)(6) The requirement of paragraph (2) that the statement of net quantity of contents include a statement in terms of the SI metric system shall not apply to foods that are packaged at the retail store level.~~

vi. **In §1458 add a new subsection to enable the Secretary of Commerce to carry out a program of planning, coordination, and public education, consistent with other national policy and interests, with the aim of coordinating voluntary conversion to the metric system on packaged goods:**

§1458. Cooperation with State Authorities; Transmittal of Regulations to States; Noninterference with Existing Programs, Coordination of Voluntary Conversion

(a) A copy of each regulation promulgated under this chapter shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health and Human Services under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

(c) **The Secretary of Commerce shall carry out a program of planning, coordination, and public education, consistent with other national policy and interests, with the aim of coordinating voluntary conversion to the metric system on packaged goods and:**

(i) **Provide coordination and appropriate forums so that large and small manufacturers, wholesalers, retailers and other interested parties may formulate, and recommend or suggest, specific programs for coordinating voluntary conversion in each packaging segment.**

(ii) **Publicize, in an appropriate manner, proposed programs and provide an opportunity for interested groups or individuals to submit comments on or participate in these programs.**

(iii) **Coordinate and/or promote public information and education programs, to aid industry and consumers in becoming familiar with the meaning and applicability of**

**metric terms and measures in daily life so that they can make value comparisons in the marketplace.**

- vii. Add a new section that clarifies that no provision of the Fair Packaging and Labeling Act should be construed to require any change in unit pricing, product advertisements, recipes, nutrition labeling, package sizes, or other information:

**§1462. Limitations.**

**Nothing in this chapter shall be construed to apply to unit pricing, advertising, recipes, nutrition labeling, other general pricing information, or to require changes in package sizes.**





THE CURRENT FAIR PACKAGING AND LABELING ACT WITH  
PROPOSED AMENDMENTS SHOWN AS THEY WOULD APPEAR IN  
THE LAW.

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**TITLE 15 - COMMERCE AND TRADE -- CHAPTER 39 - FAIR PACKAGING AND LABELING PROGRAM**

**§1451. Congressional Delegation of Policy.**

Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.

**§1452. Unfair and Deceptive Packaging and Labeling: Scope of Prohibition.**

(a) Nonconforming labels - It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined in this chapter) for distribution in commerce, or for any person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, to distribute or to cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this chapter and of regulations promulgated under the authority of this chapter.

(b) Exemptions - The prohibition contained in subsection (a) of this section shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

**§1453. Requirements of Labeling; Placement, Form, and Contents of Statement of Quantity; Supplemental Statement of Quantity.**

(a) Contents of label - No person subject to the prohibition contained in section 1452 of this title shall distribute or cause to be distributed in commerce any packaged consumer commodity unless in conformity with regulations which shall be established by the promulgating authority pursuant to section 1455 of this title which shall provide that -

(1) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor;

**(2) The net quantity of contents (in terms of weight or mass, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label:**

**(A) using the most appropriate unit of the metric system of measurement and the inch-pound measurement equivalent, except as provided in paragraph (6) of this subsection; or**

**(B) using only the most appropriate units of the metric system of measurement.**

~~(2) The net quantity of contents (in terms of weight or mass, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display~~

~~panel of that label, using the most appropriate units of both the customary inch/pound system of measure, as provided in paragraph (3) of this subsection, and except as provided in paragraph (3)(A)(ii) or paragraph (6) of this subsection, the SI metric system.~~

(3) The separate label statement of net quantity of contents appearing upon or affixed to any package

**(A) for those portions of the net quantity of contents statement using inch-pound units,**

(i) if on a package labeled in terms of weight, shall be expressed in pounds, with any remainder in terms of ounces or common or decimal fractions of the pound; or in the case of liquid measure, in the largest whole unit (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart;

(ii) if on a random package, may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than three decimal places; ~~and is not required to, but may include a statement in terms of the SI metric system carried out to not more than three decimal places~~

(iii) if on a package labeled in terms of linear measure, shall be expressed in terms of the largest whole unit (yards, yards and feet, or feet, as appropriate) with any remainder in terms of inches or common or decimal fractions of the foot or yard;

(iv) if on a package labeled in terms of measure of area, shall be expressed in terms of the largest whole square unit (square yards, square yards and square feet, or square feet, as appropriate) with any remainder in terms of square inches or common or decimal fractions of the square foot or square yard;

(B) shall appear in conspicuous and easily legible type in distinct contrast (by topography, layout, color, embossing, or molding) with other matter on the package;

(C) shall contain letters or numerals in a type size which shall be (i) established in relationship to the area of the principal display panel of the package, and (ii) uniform for all packages of substantially the same size; and

(D) shall be so placed that the lines of printed matter included in that statement are generally parallel to the base on which the package rests as it is designed to be displayed; and

(4) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight or mass, measure, or numerical count) of each such serving.

(5) For purposes of paragraph (3)(A)(ii) **and paragraph (6)** of this subsection the term "random package" means a package which is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights or masses, that is, packages with no fixed weight or mass pattern.

**(6) The net quantity of contents statement for foods that are packaged at the retail store level and for random packages shall be expressed using one of three possible regimes: using only the most appropriate units of the metric system, using only the most appropriate inch-pound units, or using both the metric units and inch-pound units.**

~~(6) The requirement of paragraph (2) that the statement of net quantity of contents include a statement in terms of the SI metric system shall not apply to foods that are packaged at the retail store level.~~

(b) Supplemental statements

No person subject to the prohibition contained in section 1452 of this title shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a) of this section, but nothing in this subsection or in paragraph (2) of subsection (a) of this section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: Provided, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight or mass, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

**§1454. Rules and Regulations.**

(a) Promulgating authority - The authority to promulgate regulations under this chapter is vested in (A) the Secretary of Health and Human Services (referred to hereinafter as the "Secretary") with respect to any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 321 of title 21; and (B) the Federal Trade Commission (referred to hereinafter as the "Commission") with respect to any other consumer commodity.

(b) Exemption of commodities from regulations - If the promulgating authority specified in this section finds that, because of the nature, form, or quantity of a particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements otherwise applicable under section 1453 of this title is impracticable or is not necessary for the adequate protection of consumers, the Secretary or the Commission (whichever the case may be) shall promulgate regulations exempting such commodity from those requirements to the extent and under such conditions as the promulgating authority determines to be consistent with section 1451 of this title.

(c) Scope of additional regulations - Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 1453 of this title are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to -

(1) establish and define standards for characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight or mass, dimensions, or number of packages which may be used to enclose any commodity;

(2) regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(3) require that the label on each package of a consumer commodity (other than one which is a food within the meaning of section 321(f) of title 21) bear (A) the common or usual name of such consumer commodity, if any, and (B) in case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

(4) prevent the nonfunctional-slack-fill of packages containing consumer commodities. For purposes of paragraph (4) of this subsection, a package shall be deemed to be nonfunctionally slack-filled if it is

filled to substantially less than its capacity for reasons other than (A) protection of the contents of such package or (B) the requirements of machines used for enclosing the contents in such package.

(d) Development by manufacturers, packers, and distributors of voluntary product standards - Whenever the Secretary of Commerce determines that there is undue proliferation of the weights or masses, measures, or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed in packages for sale at retail and such undue proliferation impairs the reasonable ability of consumers to make value comparisons with respect to such consumer commodity or commodities, he shall request manufacturers, packers, and distributors of the commodity or commodities to participate in the development of a voluntary product standard for such commodity or commodities under the procedures for the development of voluntary products standards established by the Secretary pursuant to section 272 of this title. Such procedures shall provide adequate manufacturer, packer, distributor, and consumer representation.

(e) Report and recommendations to Congress upon industry failure to develop or abide by voluntary product standards - If (1) after one year after the date on which the Secretary of Commerce first makes the request of manufacturers, packers, and distributors to participate in the development of a voluntary product standard as provided in subsection (d) of this section, he determines that such a standard will not be published pursuant to the provisions of such subsection (d), or (2) if such a standard is published and the Secretary of Commerce determines that it has not been observed, he shall promptly report such determination to the Congress with a statement of the efforts that have been made under the voluntary standards program and his recommendation as to whether Congress should enact legislation providing regulatory authority to deal with the situation in question.

#### **§1455. Procedures for Promulgation of Regulations.**

(a) Hearings by Secretary of Health and Human Services - Regulations promulgated by the Secretary under section 1453 or 1454 of this title shall be promulgated, and shall be subject to judicial review, pursuant to the provisions of subsections (e), (f), and (g) of section 371 of title 21. Hearings authorized or required for the promulgation of any such regulations by the Secretary shall be conducted by the Secretary or by such officer or employees of the Department of Health and Human Services as he may designate for that purpose.

(b) Judicial review; hearings by Federal Trade Commission - Regulations promulgated by the Commission under section 1453 or 1454 of this title shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 371 of title 21 in the same manner, and with the same effect, as if such proceedings were taken by the Secretary pursuant to subsection (a) of this section. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

(c) Cooperation with other departments and agencies - In carrying into effect the provisions of this chapter, the Secretary and the Commission are authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

(d) Returnable or reusable glass containers for beverages - No regulation adopted under this chapter shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act, nor shall any regulation under this chapter preclude the orderly disposal of packages in inventory or with the trade as of the effective date of such regulation.

#### **§1456. Enforcement.**

(a) Misbranded consumer commodities - Any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 US C. 321), and

which is introduced or delivered for introduction into commerce in violation of any of the provisions of this chapter, or the regulations issued pursuant to this chapter, shall be deemed to be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act (21 USC 331 et seq.), but the provisions of section 303 of that Act (21 USC. 333) shall have no application to any violation of section 1452 of this title.

(b) Unfair or deceptive acts or practices in commerce - Any violation of any of the provisions of this chapter, or the regulations issued pursuant to this chapter, with respect to any consumer commodity which is not a food, drug, device, or cosmetic, shall constitute an unfair or deceptive act or practice in commerce in violation of section 45(a) of this title and shall be subject to enforcement under section 45(b) of this title.

(c) Imports - In the case of any imports into the United States of any consumer commodity covered by this chapter, the provisions of sections 1453 and 1454 of this title shall be enforced by the Secretary of the Treasury pursuant to section 801(a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 USC. 381).

#### **§1457. Annual Reports to Congress: Submission Dates.**

Each officer or agency required or authorized by this chapter to promulgate regulations for the packaging or labeling of any consumer commodity, shall transmit to the Congress each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this chapter during the preceding fiscal year. All agencies except the Department of Health and Human Services and the Federal Trade Commission shall submit their reports in January of each year. The Department of Health and Human Services shall include this report in its annual report to Congress on activities under the Federal Food, Drug, and Cosmetic Act (21 USC. 301 et seq.), and the Federal Trade Commission shall include this report in the Commission's annual report to Congress.

#### **§1458. Cooperation with State Authorities; Transmittal of Regulations to States; Noninterference with Existing Programs, Coordination of Voluntary Conversion**

(a) A copy of each regulation promulgated under this chapter shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health and Human Services under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

**(c.) The Secretary of Commerce shall carry out a program of planning, coordination, and public education, consistent with other national policy and interests, with the aim of coordinating voluntary conversion to the metric system on packaged goods and:**

- (i) Provide coordination and appropriate forums so that large and small manufacturers, wholesalers, retailers and other interested parties may formulate, and recommend or suggest, specific programs for coordinating voluntary conversion in each packaging segment.**
- (ii) Publicize, in an appropriate manner, proposed programs and provide an opportunity for interested groups or individuals to submit comments on or participate in these programs.**
- (iii) Coordinate and/or promote public information and education programs, to aid industry and consumers in becoming familiar with the meaning and applicability of metric terms and measures in daily life so that they can make value comparisons in the marketplace.**

## **§1459. Definitions.**

For the purpose of this chapter -

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act [21 USC. 301 et seq.]), and any other 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.

Such term does not include -

(1) any meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC. 136 et seq.), or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (21 USC. 151 et seq.), commonly known as the Virus-Serum-Toxin Act;

(3) any drug subject to the provisions of section 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 USC. 353(b)(1) and 356);

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 USC. 201 et seq.); or

(5) any commodity subject to the provisions of the Federal Seed Act (7 USC. 1551 et seq.).

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include -

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 USC. 231-233), or the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 USC. 234-236).

(c) The term "label" means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity.

(d) The term "person" includes any firm, corporation, or association.

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States not organized with a legislative body, but shall not include exports to foreign countries.

(f) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

**§1460. Savings Provisions.**

Nothing contained in this chapter shall be construed to repeal, invalidate, or supersede - (a) the Federal Trade Commission Act (15 USC. 41 et seq.) or any statute defined therein as an antitrust Act; (b) the Federal Food, Drug, and Cosmetic Act (21 USC. 301 et seq.); or (c) the Federal Hazardous Substances Labeling Act (15 USC. 1261 et seq.).

**§1461. Effect Upon State Law.**

It is hereby declared that it is the express intent of Congress to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this chapter which are less stringent than or require information different from the requirements of section 1453 of this title or regulations promulgated pursuant thereto.

**§1462. Limitations.**

**Nothing in this chapter shall be construed to apply to unit pricing, advertising, recipes, nutrition labeling, other general pricing information, or to require changes in package sizes.**