

Section 1425, Pub. L. 89-563, title II, § 205, Sept. 9, 1966, 80 Stat. 729, provided that, in event of conflict, orders and regulations issued by Secretary under this subchapter and subchapter I of this chapter applicable to motor vehicle tires were to prevail over orders and interpretations issued by Federal Trade Commission. See section 30123 of Title 49.

Section 1426, Pub. L. 89-563, title II, § 206, as added Pub. L. 91-265, § 6, May 22, 1970, 84 Stat. 263, related to safety standards for retreaded tires.

### SUBCHAPTER III—RESEARCH AND TEST FACILITIES

#### § 1431. Repealed. Pub. L. 103-272, § 7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 89-563, title III, § 301, as added Pub. L. 91-265, § 7, May 22, 1970, 84 Stat. 263; amended H. Res. 988, Jan. 3, 1975; S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980, related to facilities for research and testing in traffic safety.

### CHAPTER 39—FAIR PACKAGING AND LABELING PROGRAM

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#### § 1451. Congressional declaration 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.

(Pub. L. 89-755, § 2, Nov. 3, 1966, 80 Stat. 1296.)

#### EFFECTIVE DATE

Pub. L. 89-755, § 13, Nov. 3, 1966, 80 Stat. 1302, provided that: "This Act [enacting this chapter] shall take effect on July 1, 1967: *Provided*, That the Secretary (with respect to any consumer commodity which is a food, drug, device, or cosmetic, as those terms are defined by the Federal Food, Drug, and Cosmetic Act) [section 301 et seq. of Title 21, Food and Drugs], and the Commission (with respect to any other consumer commodity) may by regulation postpone, for an additional twelve-month period, the effective date of this Act [this chapter] with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest."

#### SHORT TITLE

Pub. L. 89-755, § 1, Nov. 3, 1966, 80 Stat. 1296, provided: "That this Act [enacting this chapter] may be cited as the 'Fair Packaging and Labeling Act'."

#### § 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.

(Pub. L. 89-755, § 3, Nov. 3, 1966, 80 Stat. 1296.)

#### § 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, 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)(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) 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 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.

(Pub. L. 89-755, §4, Nov. 3, 1966, 80 Stat. 1297; Pub. L. 102-245, title I, §107(a), Feb. 14, 1992, 106 Stat. 13; Pub. L. 102-329, §§1, 3, Aug. 3, 1992, 106 Stat. 847, 848.)

#### AMENDMENTS

1992—Pub. L. 102-245, §107, which directed amendment of section, effective two years after Feb. 14, 1992, by substituting "weight or mass" for "weight" in subssecs. (a)(2), (4), (5) and (b) and "weights or masses" for "weights" in subsec. (a)(5), by inserting "", using the most appropriate units of the SI metric system as the primary system for measuring quantity" after "panel of that label" in subsec. (a)(2), by substituting "that also displays the avoirdupois system of measure, and that contains" for "containing" in subsec. (a)(3)(A)(i), by inserting "that also displays the avoirdupois system of measure" after "random package" in subsec. (a)(3)(A)(ii), by inserting "that also displays the avoirdupois system of measure" after "linear measure" in subsec. (a)(3)(A)(iii), and by inserting "that also displays the avoirdupois system of measure" in subsec. (a)(3)(A)(iv), was repealed by Pub. L. 102-329, §3.

Subsec. (a)(2). Pub. L. 102-329, §1(1), (3), substituted "weight or mass" for "weight" and inserted before semicolon at end "", 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".

Subsec. (a)(3)(A)(i). Pub. L. 102-329, §1(4)(A), substituted "labeled in terms of weight, shall be expressed in pounds" for "containing less than four pounds or one gallon and labeled in terms of weight or fluid measure, shall, unless subparagraph (ii) applies and such statement is set forth in accordance with such subparagraph, be expressed both in ounces (with identification as to avoirdupois or fluid ounces) and, if applicable, in pounds for weight units".

Subsec. (a)(3)(A)(ii). Pub. L. 102-329, §1(4)(B), (C), substituted "three" for "two" and inserted before semicolon at end "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".

Subsec. (a)(3)(A)(iii). Pub. L. 102-329, §1(4)(D), substituted "in terms of" for "both in terms of inches and".

Subsec. (a)(3)(A)(iv). Pub. L. 102-329, §1(4)(E), substituted "in terms of" for "both in terms of square inches and".

Subsec. (a)(4). Pub. L. 102-329, §1(1), substituted "weight or mass" for "weight".

Subsec. (a)(5). Pub. L. 102-329, §1(1), (2), substituted "weight or mass" for "weight" and "weights or masses" for "weights".

Subsec. (a)(6). Pub. L. 102-329, §1(5), added par. (6).

Subsec. (b). Pub. L. 102-329, §1(1), substituted "weight or mass" for "weight".

#### EFFECTIVE DATE OF 1992 AMENDMENTS

Pub. L. 102-329, §2, Aug. 3, 1992, 106 Stat. 847, provided that: "The amendments made by section 1 [amending this section and section 1454 of this title] shall take effect on February 14, 1994. The amendments made by section 1 shall have no effect on the sale or distribution of products whose labels have been printed before such effective date. Nothing in the amendments made by section 1 shall apply to unit pricing, advertising, recipe programs, nutrition labeling, or other general pricing information. Nothing in the amendments made by section 1 shall be construed to require changes in package size or to affect in any way the size of packages."

Section 107(b) of Pub. L. 102-245, which provided that section 107 of Pub. L. 102-245 which amended this section and section 1454 of this title was to take effect 2 years after Feb. 14, 1992, was repealed by Pub. L. 102-329, §3, Aug. 3, 1992, 106 Stat. 848.

## § 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.

(Pub. L. 89-755, §5, Nov. 3, 1966, 80 Stat. 1298; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 102-245, title I, §107(a)(1), (2), Feb. 14, 1992, 106 Stat. 13; Pub. L. 102-329, §§1(1), (2), 3, Aug. 3, 1992, 106 Stat. 847, 848.)

#### AMENDMENTS

1992—Pub. L. 102-245, §107(a)(1), (2), (b), which directed amendment of section, effective two years after Feb. 14, 1992, by substituting “weight or mass” for “weight” in subsec. (c)(1) and “weights or masses” for “weights” in subsec. (d), was repealed by Pub. L. 102-329, §3.

Subsec. (c)(1). Pub. L. 102-329, §1(1), substituted “weight or mass” for “weight”.

Subsec. (d). Pub. L. 102-329, §1(2), substituted “weights or masses” for “weights”.

#### CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (a) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.