

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), but nothing in this subsection or in paragraph (2) of subsection (a) shall prohibit supplemental statements, at other places on the package, describing in non-deceptive 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 subsecs. (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.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-329 effective Feb. 14, 1994, but with such amendment to have no effect on the sale or distribution of products whose labels have been printed before such date, no application to unit pricing, advertising, recipe programs, nutrition labeling, or other general pricing information, and no construction requiring changes in package size or affecting in any way the size of packages, see section 2 of Pub. L. 102-329, set out as a note under section 1453 of this title.

§ 1455. Procedure 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.