

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 20, 1991, the Federal Trade Commission ("the Commission") issued final regulations (56 FR 11653) amending 16 CFR part 307, the Commission's existing regulations pursuant to the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("the Smokeless Tobacco Act"). The amendments deleted the exemption of utilitarian objects from the regulations, and provided a method for displaying and rotating the health warnings on utilitarian objects. The amendments also changed the requirements for the rotation of the health warnings on point-of-sale and non-point-of-sale promotional materials ("promotional materials"). On January 15, 1993, the Commission deleted the promotional materials portion of the 1991 amendment, indicating that it had failed to receive sufficient comment on this portion of the Regulation. At the same time, the Commission re-proposed its 1991 rule for promotional materials warning label rotations and sought comment. Some of the comments received suggested that the Commission should not only amend the rotational schedule for promotional materials, but also amend the regulations governing the rotation of utilitarian objects. Thus, the Commission is seeking public comment on whether the regulations governing the rotation schedule for utilitarian objects should be amended.

All persons are hereby notified of the opportunity to submit written data, views, and arguments concerning the requirements for the rotation of health warnings on utilitarian objects.

DATES: Written comments will be accepted on or before April 17, 1995.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip S. Priesman, Attorney, (202) 326-2484, Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A—Background

On January 15, 1993, the Commission proposed amending 16 CFR part 307 (58 FR 4874) to modify the rotational schedule for health warnings on promotional materials. Some of the comments received suggested that the Commission should not only amend the rotational provisions for promotional materials, but also amend the regulations governing the rotation of utilitarian objects.

The proposed rule would provide that a satisfactory plan for utilitarian objects could provide for rotation according to either the date the object is disseminated or the date the object is ordered. It would also delete the exception permitting random rotation under certain circumstances. This exception was intended to alleviate the hardship caused when date of dissemination was specified as the only acceptable basis for a rotation schedule. The Commission currently permits rotation methods based on dissemination date or order date for promotional materials. See 58 FR 4874 (Jan. 15, 1993). The proposed rule for utilitarian items follows the rotation method currently in effect for promotional materials. However, the proposed rule would permit rotation based on dissemination date or order date only if the production of materials is carried out in a manner consistent with customary business practices. Thus, under the proposed rule, there would no longer be any need for random rotation. For these reasons, the Commission is proposing the deletion of the random rotation exception from the regulations.

Section B—Questions

In particular, the Commission is soliciting information on the following questions:

Question 1. What is the likely effect of the proposed requirements for the

rotation of health warnings or utilitarian objects on the costs, profitability, competitiveness, and employment of small business entities?

Question 2. The Smokeless Tobacco Act requires smokeless tobacco companies to submit plans to the Commission that specify the method the companies will use to rotate, display, and distribute the required health warning statements on their packaging and advertising. The original requirement for the submission of plans by marketers of smokeless tobacco products was submitted to, and approved by, the Office of Management and Budget. OMB Control No. 3084-0082.

By changing the requirements for the rotation of the health warnings on utilitarian objects, the proposed amendments will require some of the smokeless tobacco companies to revise their rotational plans for utilitarian objects. What are the possible paperwork burdens that the proposed utilitarian objects amendment to 16 CFR Part 307 may impose?

Question 3. What are the possible regulatory alternatives that would reduce the economic impact of the proposed rotational requirements for warning labels on utilitarian objects, yet fully implement the regulatory mandate of the Smokeless Tobacco Act?

Section C—Regulatory Flexibility Act

When the Smokeless Tobacco Regulations were first proposed, the FTC certified that the Regulatory Flexibility Act requirement for regulatory analysis was not applicable because the regulations did not appear to have a significant economic impact on a substantial number of small entities. 51 FR 24378 (1986). The Commission has re-examined that issue with respect to the proposed amendment for utilitarian objects and has preliminarily determined that the proposed amendment will not change that determination because the amendment merely enables manufacturers of smokeless tobacco to modify slightly an already existing schedule by which they rotate the three required warnings on utilitarian objects. In order to ensure, however, that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed regulations on costs, profitability,