

which is packaged, requires dimensions such as "5 in. × 3 in. × 1 in." A multi-component package or a package containing two or more units of the same commodity shall bear the net quantity statement in terms of count, and weight, volume, area, or dimensions as required. This interpretation does not preclude the option to enumerate a unit count on a single packaged commodity if so desired.

(b) [Reserved]

[34 FR 18087, Nov. 8, 1969]

§ 503.5 Interpretation of the definition of "consumer commodity" as contained in section 10(a) of the Fair Packaging and Labeling Act.

(a) Section 10(a) of the Fair Packaging and Labeling Act defines the term *consumer commodity* in four classifications. These are:

(1) Any food, drug, device, or cosmetic;

(2) 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.

(i) For consumption by individuals and which usually is consumed or expended in the course of such consumption.

(ii) For use by individuals for purposes of personal care and which usually is consumed or expended in the course of such use.

(iii) For use by individuals in the performance of services ordinarily rendered within the household and which usually is consumed or expended in the course of such use.

(b) Section 10(a) then expressly excludes

(1) Meats, poultry, and tobacco,

(2) Economic poisons and biologics for animals,

(3) Prescription drugs,

(4) Alcoholic beverages, and

(5) Agricultural and vegetable seeds.

(c) Pursuant to sections 5 and 7 of the Fair Packaging and Labeling Act, the authority to promulgate regulations and to enforce the Act as to any food, drug, device, or cosmetic has been delegated to the Secretary of Health, Education, and Welfare and as to any other "consumer commodity" to the Federal Trade Commission.

(d) As to these articles, products, or commodities subject to regulation by the Federal Trade Commission, the legislative history of the Act demonstrates the intent of Congress, for the reasons stated therein, to place the following categories outside the scope of the definition of "consumer commodity":

(1) Durable articles or commodities;

(2) Textiles or items of apparel;

(3) Any household appliance, equipment, or furnishing, including feather and down-filled products, synthetic-filled bed pillows, mattress pads and patchwork quilts, comforters and decorative curtains;

(4) Bottled gas for heating or cooking purposes;

(5) Paints and kindred products;

(6) Flowers, fertilizer, and fertilizer materials, plants or shrubs, garden and lawn supplies;

(7) Pet care supplies;

(8) Stationery and writing supplies, gift wraps, fountain pens, mechanical pencils, and kindred products.

(e) The articles, products, or commodities that are within the terms of section 10(a) of the Act and subject to regulation by the Federal Trade Commission are either expendable commodities for consumption by individuals, expendable commodities used for personal care, or expendable commodities used for household services. The primary terms in section 10(a) for defining these categories are:

(1) Consumption by individuals;

(2) Use by individuals;

(3) Personal care by individuals;

(4) Performances of services ordinarily rendered within the household by individuals;

(5) Consumed or expended.

(f) These terms are defined as follows:

(1) *Consumption by individuals*. This term as it is used in section 10(a) means the using up of an article, product, or commodity by an individual.

(2) *Use by individuals*. This term as it is used in section 10(a) means the employment or application of an article, product, or commodity by an individual.

(3) *Personal care by individuals*. This term as it is used in section 10(a) means that activity of an individual

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which is concerned with protecting, enhancing, and providing for the general cleanliness, health, or appearance of the individual.

(4) *Performance of services ordinarily rendered within the household by individuals.* These terms as they are used in section 10(a) mean: The term *household* refers to the interior and exterior of dwellings or residences occupied by individuals, including the surrounding premises. The term *performance of services ordinarily rendered within the household* means the doing of any activity by an individual within the above-described area which is normally done in connection with the maintenance and occupation of the above-described area as a habitation for individuals.

(5) *Consumed or expended.* These terms as they are used in section 10(a) mean (i) the immediate destruction or extinction of an article, product, or commodity, or of the part used; or (ii) the substantial diminution in the quantity, quality or utility of an article, product, or commodity which results from usage upon one or several occasions over a comparatively short period of time.

(g) The foregoing definition serves to amplify the definition of "consumer commodity" supplied by Congress in section 10(a) of the Act. As questions arise as to whether specific articles, products, or commodities are included in the above definition, the Commission will consider, among other things, the Congressional policy declared in section 2 of the Act, namely, that packages and labels should enable consumers to obtain accurate information as to the quantity of contents and should facilitate value comparisons. That is, in making its determinations of inclusions and exclusions under this definition, the Commission will consider the requirements of both the Act and the pertinent regulations and in that connection will regard as one criterion the extent to which the disclosures required on "consumer commodities" are material to a consumer's selection of a particular article, product, or commodity. Interpretative rulings in such instances will be made public, and can be expected to further contribute to the development of clearer

delineation of the scope of the term "consumer commodity".

(h) With respect to articles, products, or commodities included within the definition of "consumer commodities", the Commission will consider requests for exemptions in accordance with section 5(b) of the Act and § 500.3(e) of this chapter, and will make public its rulings on all such requests.

[34 FR 12945, Aug. 9, 1969]

§ 503.6 Packagers' duty to withhold availability of packages imprinted with retail sale price representations.

To clarify the requirements, under part 502 of this chapter, that a packager or labeler will not make packages marked with retail sale price representations available in any circumstance where he knows or should have reason to know that it will be used as an instrumentality for deception or for frustration of value comparison, the following represents the opinions of the Commission:

(a) Details of a plan to provide special packaging or special package sizes bearing retail sale price representations should contain the condition that customers will not be provided with such packages unless they resell the package at a price which fully passes on to the purchasers the represented savings or sale price advantage.

(b) A packager or labeler who, in good faith, takes reasonable and prudent measures to verify the performance of his customers will be deemed to have satisfied his obligation under the regulations. If the packager has taken such steps, the fact that a particular customer has failed to resell the packages at a price which fully passes on to the purchaser the represented savings or sale price advantage shall not alone place a seller in violation of the regulations.

(c) Any packager or labeler who determines that a customer does not intend to fulfill or has not fulfilled the conditions of an offer should immediately refrain from further sale under that offer to the customer. In situations where proper fulfillment of the conditions of an offer are in question, the Commission will resolve the issue