FAIR PACKAGING AND LABELING ACT


Not all amendments are necessarily cited here or in subsequent chapters of this book when statutes are presented. Amendments of a "housekeeping" nature usually are omitted. The term "major revision," applied in some instances, means amendments were made which changed substantially some of the earlier concepts or policies. The term "amended," as used in this book when statutes are presented, means a rewriting of the law or rephrasing portions of it without necessarily changing the major concepts or policies. These terms are chosen and used on a strictly arbitrary basis to help guide the reader concerning the more important amendments. All amendments to original legislation are referred to in the United States Code and the United States Code Annotated and these publications should be consulted when details regarding the laws are desired.

Beginning with the 85th Congress, public laws are numbered to include the number of the Congress which passed them. Thus, instead of referring to a public law as "Public Law 487, 89th Congress, 2nd Session," it could be referred to simply as "Public Law 89-487." Citations in the United States Code further abbreviate this to "Pub. L. 89-487."

Citations given under "current law" refer to the United States Code (U.S.C.). Thus, 5 U.S.C. §§551-559 means Sections 551 through 559 in Title 5 of the United States Code. If a single section is cited, the symbol § is used. Furthermore, because the United States Code supplemented by information in the United States Code Annotated usually provides the most current form of the acts of Congress which are in force, it is these legal publications which are used as the source of laws given below and in subsequent chapters.

During consideration of passage of the Fair Packaging and Labeling Act, Congress showed concern about several things to which consumers were being subjected. These were things related to retail merchandizing of products of many kinds, not limited to food products alone. One was the lack of uniformity of statements on labels of the quantity of contents, or of the positioning of such information on the labels. Another was the proliferation of quantities, or sizes of packages, of the same kind (and sometimes the same brand) of retail product offered for sale. There was concern for the use of qualifying words or phrases, such as "giant size," "large quart" and "super," in association with statements of net quantities of contents, nonfunctional-sack-fill of packages, the use of "cents off" in conjunction with the prices of retail units and the lack of conspicuousness of pertinent information on certain product labels.

Unlike previous legislation, particularly in relation to food items, which dealt with misbranding and adulteration, the former being concerned largely with the accuracy of statements on labels, the latter with the composition and safety of the product, the Fair Packaging and Labeling Act deals with the way in which the product is represented through its package or label. Emphasis is on providing packaging and labeling which should, as the policy statement in the act says, "facilitate value comparisons."
The Fair Packaging and Labeling Act is published under Title 15 of the United States Code as Chapter 39—Fair Packaging and Labeling Program. The first section states the policy as follows:

§ 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.

The persons to whom the act applies and the prohibitions placed upon them are designated in the next section as follows:

§ 1452. Unfair and deceptive packaging and labeling; scope of prohibition.

(a) 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) 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.

The information to be included on a label of any packaged consumer commodity, and the manner and place in which such information is to appear, are spelled out in the next section, which also prohibits use of qualifying words or phrases in conjunction with statements of net quantity of contents.

§ 1453. Requirements of labeling; placement, form, and contents of statement of quantity; supplemental statement of quantity.

(a) 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, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label;

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

(A) (i) if on a package 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, 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 two decimal places;

(iii) if on a package labeled in terms of linear measure, shall be expressed both in terms of inches and 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 both in terms of square inches and 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 typography, 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, 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