

By direction of the Commission.

Donald S. Clark,

Secretary.

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16 CFR Part 403

Deceptive Use of "Leakproof," "Guaranteed Leakproof," Etc., as Descriptive of Dry Cell Batteries

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the "FTC" or "Commission") proposes to commence a rulemaking proceeding to repeal its Trade Regulation Rule on Deceptive Use of "Leakproof," "Guaranteed Leakproof," Etc., as Descriptive of Dry Cell Batteries ("the Dry Cell Battery Rule" or "the Rule"), 16 CFR Part 403. The Commission is soliciting written comments, data, and arguments concerning this proposal. The Commission also is requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides.

DATES: Written comments must be submitted on or before April 24, 1997.

ADDRESSES: Written comments should be identified as "16 CFR Part 403 Comment" and sent to Secretary, Federal Trade Commission, Room 159, Sixth St. and Pennsylvania Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, FTC, Bureau of Consumer Protection, Division of Enforcement, Sixth St. and Pennsylvania Ave., N.W., Washington, DC 20580, (202) 326-3038.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is being published pursuant to Section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7 *et seq.*, and 5 U.S.C. *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulations rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

On May 20, 1964, the Commission promulgated a trade regulation rule that

states that in connection with the sale of dry cell batteries in commerce, the use of the word "leakproof," the term "guaranteed leakproof," or any other word or term of similar import, or any abbreviation thereof, in advertising, labeling, marking or otherwise, as descriptive of dry cell batteries, constitutes an unfair method of competition and an unfair or deceptive act or practice in violation of section 5 of the FTC Act (16 CFR 403.4). This Rule was based on the Commission's finding that, despite efforts by dry cell battery manufacturers to eliminate electrolyte leakage, battery leakage and damage therefrom occurs from the use to which consumers ordinarily subject dry cell batteries.

The Rule does not prohibit manufacturers or marketers from offering or furnishing guarantees that provide for restitution in the event of damage from battery leakage, provided no representation is made, directly or indirectly, that dry cell batteries will not leak (16 CFR 403.5). The Rule further provides that in the event any person develops a new dry cell battery that he believes is in fact leakproof, he may apply to the Commission for an amendment to the Rule, or other appropriate relief (16 CFR 403.6).

The Commission conducted an informal review of industry practices by examining the advertising, labeling and marking of dry cell batteries available for retail sale. The products, packaging and advertising inspected contained no presentations that the batteries so described were leakproof. The Commission's review, therefore, indicated general compliance with the Rule's provisions. Moreover, the Commission has no record of receiving any complaints regarding non-compliance with the Rule, or of initiating any law enforcement actions alleging violations of the Rule.

Additionally, the Commission's review indicated general voluntary compliance by the industry with the requirements of American National Standards Institute ("ANSI") Standard C18.1M-1992 Dry Cells and Batteries—Specifications. The ANSI standard contains specifications for dry cell batteries, and requirements for labeling the products and their packages. The ANSI standard requires the following information to be printed on the outside of each battery (when necessary, the standard permits some of this information to be applied to the unit package): (1) The name or trade name of the manufacturer; (2) the ANSI/National Electronic Distributors Association number, or some other identifying designation; (3) year and month, week

or day of manufacture, which may be a code, or the expiration of a guarantee period, in a clear readable form; (4) the nominal voltage; (5) terminal polarity; and (6) warnings or cautionary notes where applicable.¹

The ANSI standard recommends that dry cell battery manufacturers and sellers include on their products and packages several battery user guidelines and warnings that are relevant to this proceeding. They are: (1) although batteries basically are trouble-free products, conditions of abuse or misuse can cause leakage; (2) failure to replace all batteries in a unit at the same time may result in battery leakage; (3) mixing batteries of various chemical systems, ages, applications, types or manufacturers may result in poor device performance and battery leakage; (4) attempting to recharge a non-rechargeable battery is unsafe because it could cause leakage; (5) reverse insertion of batteries may cause charging, which may result in leakage; (6) devices that operate on either household current or battery power may subject batteries to a charging current, which may cause leakage; (7) do not store batteries or battery-powered equipment in high-temperature areas; and (8) do not dispose of batteries in fire.²

At a minimum, each dry cell battery and battery package inspected by Commission staff informed consumers that the batteries may explode or leak if recharged, inserted improperly, disposed of in fire, or mixed with different battery types. Based on the foregoing, the Commission has tentatively concluded that industry members that comply with the standard's point-of-sale disclosure requirements, of necessity, also are in compliance with the Rule.

Part B—Objectives

Based on the review described above, the Commission has tentatively determined that the Rule is no longer necessary.³ the objective of this notice is

¹ See section 8.1 of ANSI Standard C18.1M-1992.

² See section 7.5 of ANSI Standard C18.1M-1992.

³ Repealing the Dry Cell Battery Rule would eliminate the Commission's ability to obtain civil penalties for any future misrepresentations that dry cell batteries are leakproof. The Commission, however, has tentatively determined that repealing the Rule would not seriously jeopardize the Commission's ability to act effectively. Any significant problems that might arise could be addressed on a case-by-case basis under Section 5 of the FTC Act, 15 U.S.C. 45, either administratively or through Section 13(b) action, 15 U.S.C. 53(b), filed in federal district court. Prosecuting serious misrepresentations in district court allows the Commission to obtain injunctive relief as well as equitable remedies, such as redress or disgorgement.

to solicit comment on whether the Commission should initiate a rulemaking proceeding to repeal the Dry Cell Battery Rule.

Part C—Alternative Actions

The Commission is not considering any alternative other than the possibility of repealing the Dry Cell Battery Rule.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Dry Cell Battery Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies the issues on which it solicits public comments. The identification of issues is designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Is there a continuing need for the Rule?

(a) What benefits has the Rule provided to purchasers of the products affected by the Rule?

(b) Has the Rule imposed costs on purchasers?

(2) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?

(a) How would these changes affect the costs the Rule imposes on firms subject to its requirements?

(3) What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements?

(a) Has the Rule provided benefits to such firms?

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

(a) How would these changes affect the benefits provided by the Rule?

(5) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the rule?

(7) Are "leakproof" or "guaranteed leakproof" representations by manufacturers and marketers of dry cell batteries a significant problem in the marketplace?

(8) Should the Rule, or any portion of it, be kept in effect, or should it be repealed?

(9) How would repealing the Rule affect the benefits experienced by consumers?

(10) How would repealing the Rule affect the benefits and burdens experienced by firms subject to Rule's requirements?

(11) Does the existence of ANSI Standard C18.1M-1992 for Dry Cell Batteries eliminate or greatly lessen the need for the Rule?

Authority: Section 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR Part 403

Advertising, Dry cell batteries, Labeling, Trade practices.

By direction of the Commission.

Donald S. Clark,
Secretary.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-209785-95]

RIN 1545-AT97

Substantiation of Business Expenses for Travel, Entertainment, Gifts and Listed Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the substantiation requirements for business expenses for travel, entertainment, gifts, or listed property. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronically generated comments and requests for a public hearing must be received by June 23, 1997.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG-209785-95), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-209785-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or

electronically, via the IRS Internet site at: <http://www.irs.ustreas.gov/prod/taxregs/comments.html>.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, contact Donna M. Crisalli, (202) 622-4920; concerning submissions, contact Christina Vasquez, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by May 27, 1997.

Comments are specifically requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this notice of proposed rulemaking is in § 1.274-5T(c)(2) and (f)(4). This information is required by the IRS as a condition for a taxpayer to deduct certain business expenses or exclude from income certain reimbursed business expenses of employees. This information will be used to determine whether a taxpayer properly qualifies for a deduction or exclusion. The collection of information is required in order to deduct certain business expenses or exclude from income certain reimbursed business expenses of