Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments are they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–AWP–16.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reason discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D San Diego, North Island NAS, CA [Revised]

San Diego, North Island NAS (Halsey Field), CA
(lat. 32°41′57″ N, long. 117°12′55″ W)

That airspace extending upward from the surface to but not including 2,800 feet MSL within a 4.3-mile radius of North Island NAS (Halsey Field), excluding the airspace within the San Diego, CA, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on June 23, 1998.

John G. Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–17858 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 304

Regulatory Review and Regulatory Flexibility Act Review of Rules and Regulations Issued Under the Hobby Protection Act

AGENCY: Federal Trade Commission.

ACTION: Confirmation of rule.

SUMMARY: The Federal Trade Commission (FTC or Commission) has completed its regulatory review and Regulatory Flexibility Act (RFA) review of the Rules and Regulations Issued Under the Hobby Protection Act. The Rule regulates the marking of imitation political and numismatic items. Pursuant to its regulatory review, the Commission concludes that the Rule continues to be valuable both to consumers and firms. The Commission also certifies, pursuant to the RFA, that the Rule has not had a significant economic impact upon a substantial number of small or other entities or otherwise merits revision.

DATES: This action is effective as of July 7, 1998.

FOR FURTHER INFORMATION CONTACT: Robert E. Easton, Special Assistant, Division of Enforcement, Bureau of Consumer Protection, FTC, Washington, DC 20580, (202) 326–3029.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has determined, as part of its oversight responsibilities, to review its rules and guides periodically to seek information about their costs and benefits and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Where appropriate, the Commission will, as it did in this review, combine such periodic general reviews with reviews seeking information about the economic impact of the rule on small business firms as required by the Regulatory Flexibility Act.

II. Background

On November 29, 1973, Congress passed the Hobby Protection Act (Act).[1] The Act requires manufacturers and importers of ''imitation political items'' [2] to mark ''plainly and permanently'' such items with the

[1] 15 U.S.C. 2101–2106.

[2] An imitation political item is ''an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item.'' 15 U.S.C. 2106(2).

''calendar year'' such items were manufactured. The Act also requires manufacturers and importers of ''imitation numismatic items'' [3] to mark ''plainly and permanently'' such items with the word ''copy.'' [4] The Act further provides that the Commission is to promulgate regulations for determining the ''manner and form'' imitation political items and imitation numismatic items are to be permanently marked with the calendar year of manufacture or the word ''copy.'' [5]

In response to that requirement, in 1975 the Commission issued Rules and Regulations under the Hobby Protection Act (Rule).[6] The Rule tracks the definitions of terms used in the Act and implements the Act's ''plain and permanent'' marking requirements by establishing the sizes and dimensions of the letters and numerals to be used, the location of the marking on the item, and how to mark incusable (*i.e.*, those that can be impressed with a stamp) and nonincusable items. The Commission amended the Rule in 1988 to provide additional guidance on the minimum size of letters for the word ''copy'' as a proportion of the diameter of coin reproductions.[7]

As discussed below, the comments received in this review appear to reflect a high level of compliance as to the two products covered by the Act and Rule (*i.e.*, imitation political and numismatic items). Many comments also proposed that the Commission expand coverage of the Act and Rule to address problems involving the selling (passing off) as originals of reproductions of antiques and collectibles not covered by the Act and Rule. The Commission does not propose amending the Rule as requested because it does not have authority under the Act to expand coverage of the Act or Rule. In addition, existing laws and informational material currently available address many of the concerns raised by these comments.

[3] An imitation numismatic item is ''an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item.'' 15 U.S.C. 2106(4).

[4] 15 U.S.C. 2101(b).

[5] 15 U.S.C. 2101(c).

[6] 16 CFR Part 304.

[7] 53 FR 38942 (1988). Prior to the amendment, if a coin were too small to comply with the minimum letter size requirements, the manufacturer or importer had to individually request from the Commission a variance from those requirements. Because imitation miniature coins were becoming more common, the Commission determined that it was in the public interest to allow the placing of the word ''copy'' on miniature imitation coins in sizes that could be reduced proportionately with the size of the item.

III. Regulatory Review and Regulatory Flexibility Questions and Comments

The Commission received a total of 1,145 comments in response to its March 25, 1997 **Federal Register** request for comments.[8] Of that number, nearly 1,000 comments were form letters that advocated expanding coverage of the Act and Rules to all antiques and collectibles.[9] Of the other comments, four were from national associations,[10] four from hobby newspapers,[11] one from a private mint,[12] one from the United States Mint,[13] and the remaining were from individual collectors,[14] dealers,[15] and local associations.[16]

The Commission discusses the comments in two section: In section A, the Commission analyzes the comments relating to the products covered by the Act and Rule (''covered products''); and, in section B, the Commission discusses the comments relating to alleged problems with products outside the coverage of the Act and Rule.

A. Comments Relating to Covered Products

1. Support for the Rule

As noted previously, the Act and Rule's scope are limited to imitation political and numismatic items. The comments uniformly stated that there is a continuing need for the Rule and that is has been successful in protecting consumers from the passing off of reproductions of the covered items.[17] Indeed, two comments indicated that the Rule's protective value may have increased over the years as technological changes that have made it easier to make high quality reproductions of political and numismatic items have also made it easier to deceive consumers.[18]

The few comments addressing the issue of what costs the Rule imposes on purchasers indicated that the costs are slight and outweighed by the benefits. For example, one commenter wrote that, ''[a]ssuming that the costs of affixing the word 'copy' or the date is reflected in the selling price, it would appear that the increase per item would be an insignificant amount that any purchaser would be willing to pay by reason of the protection afforded by the rule.'' [19] Another commenter stated that the process of stamping the word ''copy'' on coins ''has no significant bearing on the price of any individual piece.'' [20] One commenter noted that the Rule saves purchasers money because it lessens that chance of purchasing a fake.[21]

In addition, the comments indicated that the Rule does not impose significant burdens or costs on firms subject to its requirements. The comments addressing this issue uniformly stated that the Rule has not imposed significant costs on subject firms [22] and in fact has benefitted them. [23] No comment suggested any changes in the Rule to reduce costs. [24]

[8] 62 FR 14049 (1997). The comments have been filed on the Commission's public record as Document Nos. B21938200001, B21938200002, etc. The comments are cited in this notice by the name of the commenter, a shortened version of the comment number, and the relevant page(s) of the comment, e.g., Daugherty, 493, 1. All Rule review comments are on the public record and are available for public inspection in the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC, from 8:30 a.m. to 5:00 p.m., Monday through Friday, except federal holidays.

[9] Seven hundred twenty-one comments were form letters cut out or photo-copied from an Antique Week newspaper or based thereon (e.g., Lubitz, 61, 1), 223 were form letters from collectors and dealers of Nippon porcelain (e.g., Dersheimer, 59, 1), and 34 comments used or were based upon an Antiques Journal form letter (e.g., Mercier, 4, 1).

[10] American Numismatic Association (ANA), 94; American Political Items Collectors (APIC), 515; Antique & Collectibles Dealers Association, Inc., 495; and Appraisers Association of America, Inc., 494 and 526.

[11] Antique & Collectors Reproduction News, 497; Antique Week, 499 and 540; Antiques Journal, 4; and Coin World, 514.

[12] Gallery Mint Museum (Gallery Mint), 398.

[13] U.S. Mint, 511.

[14] See, e.g., Barrie, 19.

[15] See, e.g., Dilinger, 103.

[16] See, e.g., Wayne County (PA) Antique Dealers Assoc., 517.

[17] See, e.g., APIC, 7, 1; Mint, 511, 1; Prestwood, 512, 1; and Peeling, 254, 1. For example, APIC stated that, ''We still have some reproductions today, but the problem is not serious, thanks to the Hobby Protection Act, and enforcement of the Act. Further, most campaign items reproduced since the early 1970's are in compliance with the Act, marked in accordance with the regulations.'' APIC, 7, 1. The United States Mint similarly favored continued coverage of imitation numismatic items because, ''[t]he numismatic area is prone to opportunism, and sanctions for objectionable behavior are hard to impose. The Hobby Protection Act works as a preventive to counter attempts to pass off reproductions as genuine coins.'' Mint, 511, 1. Other comments similarly agree that the current Act protects the political memorabilia and numismatic collecting areas and should be continued. See, e.g., Lubitz, 61, 1.

[18] APIC pointed out that the advent of color copying machines, color computer technology, and digital image creation and enhancement has increased the capability of individuals to ''create, maintain, use, transfer, and reproduce high quality images.'' APIC, 515, 7. ANA stated that, ''[a]ny change in relevant technology would only increase the ability to manufacture more deceiving replicas.'' ANA, 94, 3.

[19] ANA, 94, 2.

[20] Gallery Mint, 398, 2.

[21] APIC, 515, 3.

[22] See e.g., APIC: ''The costs imposed, if any, have been *de minimis.* The cost of adding a few more letters to a printing job * * * when the job is going to be undertaken regardless is negligible.'' APIC, 515 6. See also ANA, 94, 2; Coin World, 514, 3; and Gallery Mint, 398, 3.

[23] APIC, 515 6; and ANA, 94, 2.

[24] A few comments noted that the Rule technically overlaps with certain federal

Commenters that addressed the issue of whether the Rule imposes significant costs on small businesses indicated that the Rule imposes only *de minimis* costs on small firms [25] and several commenters stated there is no difference in the cost of compliance for small or large firms, [26] and that these costs are no different than a small business would incur under standard and prudent business practices. [27] For this reason, no commenters believed changes to the Rule were needed to reduce small business costs. [28]

Some comments indicated that the Rule is valuable to manufacturers and firms. One commenter stated that, ''The rules * * * have benefitted firms which intend to be good players. The rules have provided a standard means of denoting lawful status as a 'copy' which in turn has been recognized and accepted in the hobby and consumer marketplace.''[29] Similarly, another commenter noted the addition of the word ''copy'' or the date of manufacture may avoid litigation costs resulting from the intentional or unintentional sale of unmarked items as originals.[30]

2. Proposed amendments regarding covered products

a. Double-sided marking of ''copy'' on numismatic items.

One comment suggested amending the Rule to require that the word ''copy'' be marked on both sides of imitation numismatic items.[31] The Rule currently requires that the word ''copy'' be marked on either side of the coin (i.e., either the obverse or the reverse side of the item).[32] The comment argued that marking ''copy'' on only one side does not let potential buyers know that a replica on exhibit with only one side displayed or in an advertisement is an imitation because ''copy'' may be on the side not displayed.

The Commission has concluded that a requirement that ''copy'' be marked on both sides of an imitation coin is not warranted. The comments indicate that the current requirement for marking coins on only one side is highly successful. Regarding exhibited coins, the potential buyer would normally have the opportunity to fully view and physically handle the item, thus affording the opportunity to see the ''copy'' marking prior to purchase.

Regarding the concern that the word ''copy'' may not be displayed in advertising,[33] the Commission believes that coin depictions in advertising are likely to be small, making any ''copy'' marking proportionately even smaller. Double-sided marking of a coin is therefore unlikely to result in a prominent disclosure of the word ''copy,'' and thus would not remedy the alleged problem raised in the comment.

The Commission also believes that double-sided marking would not be without costs. Although the costs of marking ''copy'' on an additional side of the item might be slight, there would still be some cost to manufacturers. In addition, double-sided marking might detract from the esthetic appeal of the replica and could have adverse effects on the market for imitation numismatic items.

b. Require that all political items be marked with year of manufacture.

The Rule currently requires that *imitation* political items be marked with the date of manufacture. One comment recommended broadening the Rule to require that *all* political items, both original and imitation, be permanently and prominently marked with the year that the manufacturing process was completed.[34] According to the comment, requiring that the date of manufacture appear on all political items would prevent the consumer confusion and deception that occurs with certain types of political buttons. According to this comment, manufacturers routinely print excess ''button papers'' so that if they receive additional orders during the campaign they will not need to print additional papers. These excess papers may not be manufactured into finished political buttons, however, until years later. For example, the comment described a situation in which paper sheets of images created and printed in 1920 for the 1920 Cox-Roosevelt campaign were not put on buttons until 1997.

The Commission does not propose to expand the Rule to require the marking of original political items. First, the Commission does not have the authority to require such marking under the Act, which requires the marking of only imitation items. Second, the problem raised by the comment is already covered by the Act and Rule. The Act and Rule define ''Original political item'' as including ''any political button * * * produced for use in any political cause.'' [35] Until button paper is incorporated into a political button, a political button cannot have been ''produced'' for use in any political cause. A subsequently produced political button therefore would not be an ''original political item'' as defined in the Act and Rule. The type of button described by the comment would thus be an imitation political item that, under the current Rule, must be marked with the year of manufacture.

c. Replace minimum size requirements for required markings with a performanced-based standard.

The Rule currently mandates the font style and minimum size for the markings required by the Rule [36] but allows the minimum marking size for imitation numismatic items to be proportional to the size of the item.[37] The FRN asked whether the Commission should amend the Rule to replace the mandated minimum sizes with a performance-based standard, for example, with a clear and prominent disclosure requirement.[38]

Five commenters involved in the numismatic field addressed this issue. Three of those five favored keeping the existing size standards because they believe that the precise requirements of the current standard provide clear guidance as to what is lawful. According to these comments, a performance standard would introduce uncertainty that could cause delay, additional costs, or lead to litigation.[39] Two comments appeared to favor a performance-based standard, although both comments also noted the benefits of mandated size requirements.

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counterfeiting laws (Gallery Mint, 398, 3; and Ganz, 1, 1) and a consumer protection law in California (APIC, 515, 6). These comments, however, did not state that the Rule conflicted with these laws or that overlaps caused additional costs or burdens to small entities or other companies, or in any other way adversely affected businesses or consumers. The Commission, therefore, concludes that these minor overlaps do not warrant modification of the Rule.

[25] The Gallery Mint commented that while compliance with the Rule involves more time in production or die set-up, this is ''just the nature of the business'' and the requirements are ''very easy to adhere to.'' Gallery Mint, 398, 4. See also APIC, 515, 7; and Coin World, 514, 3.

[26] See, e.g., ANA: ''The cost of affixing the word 'copy' or the date would be the same for large and small firms.'' ANA, 94, 3.

[27] Coin World, 514, 3, and APIC, 515, 8.

[28] See. e.g., APIC. 515, 8; ANA, 94, 3; and Coin World, 514, 3.

[29] See. e.g., APIC, 515, 6.

[30] ANA, 94, 2.

[31] Coin World, 514, 3.

[32] 16 CFR 304.6(b)(2).

[33] The Act and Rule do not have requirements that address the advertising of covered products. The requirements address only the marking of the imitation numismatic or political item. Of course, misrepresenting a copy as an original in advertising would constitute a ''deceptive'' practice in violation of § 5 of the FTC Act. 15 U.S.C. 45.

[34] APIC, 515, 4.

[35] 15 U.S.C. 2106; and 16 CFR 304.1.

[36] *See* 16 CFR 304.5(3) and (4) (imitation political items) and 304.6(3) and (4) (imitation numismatic items).

[37] For example, the minimum total horizontal dimension of the word ''copy'' should be six millimeters or ''not less than one-half of the diameter of the reproduction.'' 16 CFR 304.6(3).

[38] 62 FR 14049.

[39] ANA, 94, 3; *Coin World*, 514, 3; and, Ganz, 1, 1.

Although one comment noted that in general mandated disclaimers are often so small as to render them worthless,[40] this comment also stated that the current Rule, with its mandated size standard, has materially lessened the amount of counterfeit political items in the marketplace.[41] This comment voiced support for modification of the current standard to a performance-based standard coupled with a ''though not smaller than'' requirement, with the caveat that ''the result must be at least as effective as the status quo.'' [42] Another comment supported adoption of a performance-based standard, specifically a clear and prominent standard, while at the same time expressing concern that ''there is too much room for individual translation'' without specific size requirements.[43]

The Commission has determined to keep the present minimum size standard. As noted previously, the comments indicated generally that the current standard is working well and does not impose significant costs on small entities or others. Second, several comments indicated that the certainty provided by the current standard allows them to plan and anticipate costs, and that a performance-based standard would eliminate these benefits and could cause confusion. Finally, the current standard already addresses a concern of those suggesting that the Commission consider a performance-based standard by allowing a minimum size for the word ''copy'' that is proportional to the size of the imitation numismatic item.

B. Comments Relating to Expanding Coverage of the Act and Rule to Antiques and Collectibles in General

As previously noted, the scope of the Act and Rule is limited to imitation political and numismatic items. This section discusses the numerous comments that related to products not presently covered by the Act and Rule.[44] In essence, these comments state that reproductions of many types of antiques and collectibles are being passed off as originals, causing economic harm to collectors and dealers. Because of improvements in technology, the comments alleged, even knowledgeable persons have difficulty differentiating the reproductions from the originals. The comments suggested two amendments to the Rules to address these problems. First, some comments proposed that the coverage of the Act and Rule be expanded to all reproductions of antiques and collectibles. Second, many comments also recommended that the Commission require permanent country-of-origin labeling for all reproductions of antiques and collectibles.

After carefully considering these proposals, the Commission has determined not to amend the Rule as suggested. First, as discussed above, the Hobby Protection Act applies only to imitation political and numismatic items. The Act does not provide the commission with authority to expand the Rule beyond the Congressionally mandated scope of the Act to cover all reproductions. The Commission also notes that existing laws and other resources address many of the problems discussed in the comments. In particular, country-of-origin marking for imports is under the jurisdiction of the U.S. Customs Service. Because many comments indicated that foreign-made reproductions pose the greatest problems, the Commission has brought the issues raised in this proceeding to the attention of the Customs Service, which has authority to take action where goods fail to bear a required country-of-origin marking.

1. The Scope and Source of the Passing-Off Problem

The comments suggested that there are many categories of collectibles subject to being passed off,[45] and that the volume of reproductions being offered for sale as originals may be large.[46] The comments provided several explanations for the passing-off problems. First, the comments uniformly stated that the quality of reproductions has greatly improved to the point that reproductions can be virtually indistinguishable from the originals.[47] Several comments noted that even experts may not be able to distinguish originals from reproductions.[48]

The comments appeared to agree that the quality of reproductions has improved, but were not in agreement regarding how these reproductions come to be passed off as originals. According to one commenter, the problem is not with reproductions being made for decorative purposes and sold in retail stores, where it is likely that purchasers are aware that they are buying reproductions. The problem begins when a reproduction subsequently enters the secondary market and may be passed off as an original.[49] Other commenters, however, argued that reproductions are intentionally sold as originals.[50]

The comments indicated that reproductions are made both overseas and domestically.[51] Although the comments do not present quantitative data that establishes the number of foreign-made reproductions being sold as originals in the United States, the majority of the commenters indicated that they believe the problems lie chiefly in overseas production.[52]

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[40] APIC, 515, 10.

[41] *Id.* at 2.

[42] *Id.* at 10.

[43] Gallery Mint, 398, 5.

[44] As described above, the Commission received over 1,000 letters advocating that the Act or Rule be expanded to cover all antiques and collectibles. *E.g.*, Sprowls, 276, 1; Bucher, 244, 1; Anderson, 58, 2; and Whitehouse, 20, 1. Many comments also described specific examples of individual instances involving the passing off of a reproduction as an original.

[45] As one comment stated, ''Fake and Repros exist in almost every sector of the collecting hobby.'' Donaldson, 11,1. The comments cite the passing off of the following products, among others: Nippon porcelain (Puckett, 45 1 and 223 form letter comments); Cambridge glassware (Upton, 505, 1); Griswold cast iron cookware (Smith, 498, 1); Coca Cola memorabilia and postcards (Wildman, 40, 1; Rutledge, 43, 1); antique quilts, transferware, majolica, and ironstone (Nickel, 18, 1); Tiffany lamps (Curry, 575, 1); calendars, calendar plates, almanacs and calendar art (Moses, 74, 1); Parrish and Nutting prints, powder horns and scrimshaw, Shaker items, Sterling Victorian match safes and lockets, Brilliant period cut glass patterns, Galle art glass, and perfume and scent bottles (Donaldson, 11, 1); and confederate veteran reunion badges and medals (Finlayson, 240, 1).

[46] See, e.g., Berndt, 52, 1; and LaBatt, 366, 1. These comments state that the commenter has visited many venues that allegedly sell reproductions as originals.

[47] See, e.g., Chervenka, 497, 2; ''Now, antique reproduction importers are manufacturing goods that are virtually identical copies of old originals including factory names, artist signatures and trademarks. Many of these new pieces * * * are cast in molds taken directly from old originals. This means new pieces do not just loosely resemble the original, they are an exact clone of the original.''

[48] Thoe, 540, 2; and Skeim, 225, 1.

[49] Billings, 22, 1.

[50] See, e.g., Tucker, 495, 1, who states that reproductions are made overseas, shipped to the United States with country-of-origin labels attached which then are removed somewhere in the distribution system and sold as originals. According to the commenter ''[t]his is fraud and * * * [t]he manufacturers of these items are well aware of what happens.'' Another commenter claims that, ''[m]ost of these items [reproductions] are expressly made to fool the general public as to authenticity.'' Porta, 572, 1.

[51] One comment noted that both domestic and overseas companies have mastered techniques for making pottery, wood, metals, and glass appear to be hundreds of years old. Thoe, 540, 1.

[52] See, e.g., Tucker, 495, 1. The comments state that a variety of countries are the sources of reproductions. For example, one comment states that Brazil, France, Italy, and several Far East countries export all types of reproductions of antiques and collectibles while the Philippines manufactures ''antique'' oak furniture which is imported into the United States and sold as authentic antiques. Sprowls, 276, 1. Another comment alleges that Galle glassware reproductions are ''being mass produced'' in Romania, China, and Japan while Roseville pottery is being produced in China. Chervenka, 497, 2.

Several comments also cite the domestic production of replicas that are passed off as originals. See, e.g., Finlayson, 240, 1.

The comments present numerous anecdotes regarding the harm caused by passing off. Although these anecdotes do not present information sufficient to quantify or determine the amount of economic and other harm caused, the following is a summary of the adverse effects noted in the comments: That the individual buyer pays considerably more than the product is worth;[53] that owners of original antiques or collectibles which are heavily reproduced lose the value of their investment;[54] that the uncertainty regarding the genuineness of antiques and collectibles dissuade persons from purchasing originals or from becoming collectors, which also adversely affects businesses that deal in originals.[55]

2. Proposals To Expand Coverage of the Rule to Non-Covered Products

Many comments propose that the coverage of the Act be expanded to all antiques and collectibles.[56] A number of comments suggest, as an alternative to expanding the coverage of the Act or in addition to such expansion, that both foreign and domestic reproductions be marked permanently with the country-of-origin. The comments generally suggested that foreign reproductions with country-of-origin labels that are non-permanent are the primary source of the passing-off problem.[57] For several reasons, however, the Commission does not propose to adopt the remedies suggested by the comments.

First, the Act does not provide the Commission with legal authority to expand the coverage of the Act to all antiques and collectibles. The plain language of the Act encompasses only numismatic and political items and directs the Commission to promulgate rules regarding the marking of only these covered products. For this reason, the Commission cannot amend the Rule to include products not itemized in the Act to require the marking of items not covered by the Act.

Second, the Commission believes that existing federal and state laws adequately address the key issues raised in the comments. For example, the majority of comments cited imported reproduction as the most significant source of passed-off goods. Well-established laws and regulations already in existence address country-of-origin markings for goods imported into the United States. Specifically, country-of-origin marking for imports is under the jurisdiction of the U.S. Customs Service, which enforces the Tariff Act.[58] Under the Tariff Act, every article of foreign origin must be legible, indelibly, and permanently marked in a conspicuous place to indicate the country of origin. The Act also allows the container of an imported good to bear the origin marking rather than the good itself, as long as the good reaches the ultimate purchaser in the container. Under the Tariff Act, then, a permanent marking is a marking that will remain on the article or container until it reaches the ultimate purchaser, although the marking may be removed by the ultimate purchaser and need not be of a permanence to remain affixed once in his or her possession. This marking may not be removed prior to delivery to the ultimate purchaser, however, and anyone who removes this marking prior to such delivery could be subject to prosecution and criminal penalties.

Commission staff has brought the concerns regarding foreign origin marking raised in this proceeding to the attention of the Customs Service because Customs regulations have an impact on several of the problems discussed in the comments. For example, several comments indicated their belief that country-of-origin labels are deliberately removed.[59] The Customs Service urges persons with information regarding the violative removal of required country-of-origin markings to write to: Office of Field Operations, ATTN: Commercial Enforcement Branch, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Washington, DC 20229 or to call Customs' toll free Commercial Fraud Hotline, 1–800–ITS–FAKE.

In addition to the deliberate removal of country-of-origin labels, many comments suggested that the lack of truly permanent country-of-origin labels on reproductions results in these reproductions being passed off as originals in the secondary market.

The Commission declines to prohibit the legal removal or loss of country-of-origin labels and does not have authority under the Act to require the origin marking of domestic reproductions. Other legal remedies are available, however. For example, passing off can be prosecuted as criminal fraud[60] or as civil fraud in a lawsuit by the buyer.[61] Additionally, if the passing off involves illegal trademark infringement, it may be actionable in a private lawsuit under the Lanham Act.[62] Further, a pattern or practice of significant affirmative misrepresentations or failures to disclose material information relating to reproductions passed off as originals may violate Section 5 of the Federal Trade Commission Act.[63]

[53] See, e.g., Chervenka, 497, 2, describing circumstances in which buyers mistook new Galle glassware for old and paid $10,000 for a reproduction which cost about $500 wholesale and paid $3,500 for a different reproduction which cost $450 wholesale. Another example mentioned was a buyer allegedly spending ''tens of thousands'' of dollars for a Tiffany lamp at ''one of the better known auction houses that employed in-house experts'' only to find out later that it was not genuine and worth less. Craig, 575, 1.

[54] Due to the glut of reproductions, ''[m]any older people who wish to sell their antiques and collectible are not getting the full value'' (Dillinger, 103, 1) while some collections ''will never recover their value because of the flood of * * * reproductions.'' Nickel, 18, 1.

[55] The comments allege that uncertainties of investment value caused by reproductions ''scare off novices who might otherwise collect these items [original antiques and collectibles]'' (Billings, 22, 1) and make collectors not buy ''for fear of reproductions.'' Skeim, 225, 1. Dealers have commented that customers' fear of buying reproductions have adversely affected their business. Vierling, 532, 1; and Craven, 508, 1.

[56] The 721 comments generated from the Antique Week form comment stated that the Act should be expanded to all antiques and collectibles and that the Commission recommend such expansion to Congress. E.g., Lubitz, 61, 1. The 223 comments using or based on the Nippon Collector's Club form letter as well as the 34 comments using or based upon the Antiques Journal form letter urged the extension of the regulatory powers of the Act to require permanent, non-removable marking for collectibles other than those currently covered. E.g., Dersheimer, 59, 1; and Mercier, 4, 1. Additionally, numerous non-form comments suggested the expansion of coverage of the Act to other antiques and collectibles. E.g., Gregory, 5, 1; Ritchie, 9, 1; Nickel, 18, 1; SeGall, 26, 1; Castle, 295, 1; James, 381, 1; Reid, 415, 1; Fendelman, 494, 1; and Curry, 575, 1. Presumably, these comments intend that all antiques and collectibles would be marked with the word ''copy'' or the date of manufacture.

[57] See, e.g., Brady, 47, 1. See also Reynolds, 169, 1; Barrie, 19, 2; Cotton, 21, 1; Berndt, 52, 1; and Carner, 213, 1.

[58] 19 U.S.C. 1304. The Tariff Act of 1930, as amended, and implementing regulations (19 CFR 134) are available at Customs Website: ''www.customs.ustreas.gov''.

[59] See note 50 supra.

[60] *E.g.*, Castle, 295, Attachment 1 (describing a criminal law enforcement inquiry regarding reproduction ''acid cutback'' lamps and vases and bronze statues being sold as antiques).

[61] Section 2–721 of the Uniform Commercial Code provides civil remedies for material misrepresentation and fraud in sales transactions;

[62] 15 U.S.C. 1125. See also Goshe, 528, 1 (describing collector's club successful law suit against manufacturer of reproductions that had illegally obtained logo trademark).

[63] Section 5 of the Federal Trade Commission Act prohibits deceptive acts or practices in commerce. 15 U.S.C. 45. A deceptive act or practice is one that is likely to mislead consumers acting reasonably under the circumstances. See Cliffdale Associates, Inc., 103 F.T.C. 110 (1984). As a matter of policy, however, the Commission does not generally intervene in individual disputes. Generally, the instances of passing off described in the comments reflect specific individual transactions, rather than a pattern or practice of passing off. Where the Commission obtains evidence of such a pattern or practice, however, it can take action. For example, the Commission recently sued a company that had telemarketed purportedly rare ''error'' postage stamps to consumers as valuable, safe, and liquid investments, at highly inflated prices. *FTC* v. *Equifin International, Inc.*, Financial Frontiers, and F. Jerold Hildreth, No. CV–97–4526–DT (CWx) (C.D. Cal. Dec. 11, 1997).

In addition to legal remedies, the record indicates that there are non-legal resources available to educate consumers about antiques and collectibles and thus reduce consumers' susceptibility to the practice of passing off. For example, several newsletters and hobby newspapers regularly warn and advise buyers of antiques and collectibles about reproductions of specific items and classes of items [64] Many comments also indicate that there are collector clubs for many categories of collectibles that provide members with similar information. Commission staff will explore whether there is a role for the Commission in these efforts to increase consumer awareness.

IV. Conclusion

The comments uniformly favor retention of the Rule and state that there is a continuing need for the Rule with regard to currently covered products, i.e., imitation numismatic and political items; that the Rule provides benefits to consumers and industry; that the Rule does not impose substantial economic burdens; and that the benefits of the Rule outweigh the minimal costs it imposes. Although the comments addressing the impact of the Rule on small entities were minimal, these comments, including comments from major national associations in the numismatic and political items trade, indicate that the Rule does not place significant burdens on small entities. Accordingly, the Commission certifies that the Rule has not had a significant impact on a substantial number of small entities.

Although many comments recommended that the Act and Rule be expanded to cover all antiques and collectibles, the Commission does not have the authority under the Act to expand the Rule in this manner. In addition, there are a variety of legal and non-legal resources that address many of the issues raised by the commenters favoring expansion of the Act's coverage. Accordingly, the Commission has determined to retain the current Rule and is terminating this review.

List of Subjects in 16 CFR Part 304

Hobbies, Labeling, Trade practices.

Authority: The Federal Trade Commission Act, 15 U.S.C. 41–58 and the Regulatory Flexibility Act, 5 U.S.C. 601.

[64] See Chervenka, 497, 3 (publisher of Antique & Collectors Reproduction News) and Antique Week, 499, attachments.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–17929 Filed 7–6–98; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AE53

Administrative Review Process; Identification and Referral of Cases for Quality Review Under the Appeals Council's Authority To Review Cases on Its Own Motion

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are amending our regulations to include rules under which a decision or order of dismissal that is issued after the filing of a request for a hearing by an administrative law judge (ALJ) may be referred to the Appeals Council for possible review under the Appeals Council's existing authority to review cases on its own motion. These final rules codify identification and referral procedures that we currently use to ensure the accuracy of decisions that ALJs and other adjudicators make at the ALJ-hearing step (hearing level) of the administrative review process. The rules also codify new quality assurance procedures to ensure the quality of dispositions at the hearing level.

DATES: This rule is effective August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243 for information about this notice. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

Under procedures set forth in §§ 404.967 ff. and 416.1467 ff., and pursuant to a direct delegation of authority from the Commissioner of Social Security, the Appeals Council, a component in our Office of Hearings and Appeals (OHA), reviews hearing decisions and orders of dismissal issued by ALJs and decisions issued by certain other adjudicators. The Appeals Council may review an ALJ's decision or dismissal of a hearing request at the request of a party to the action or, pursuant to §§ 404.969 and 416.1469, on its own motion. Through the exercise of its authority to review cases, the Appeals Council is responsible for ensuring that the final decisions of the Commissioner of Social Security in claims arising under titles II and XVI of the Social Security Act (the Act), as amended, are proper and in accordance with the law, regulations, and rulings.

The Appeals Council's authority to review cases on its own motion also applies, at present, to two types of hearing-level cases that do not result in decisions by ALJs. Under §§ 404.942 and 416.1442, attorney advisors in OHA are authorized until July 1, 1998, to conduct certain prehearing proceedings and to issue, where warranted by the documentary evidence, wholly favorable decisions. Under the provisions of §§ 404.942 (e)(2) and (f)(3) and 416.1442 (e)(2) and (f)(3), such decisions are subject to review under the own-motion authority of the Appeals Council established in §§ 404.969 and 416.1469. In addition, under §§ 404.943 and 416.1443, adjudication officers are authorized, for test purposes, to conduct certain prehearing proceedings and to issue, where warranted by the documentary evidence, wholly favorable decisions. Under the provisions of §§ 404.943(c)(2)(ii) and 416.1443(c)(2)(ii), such decisions are also subject to review on the Appeals Council's own motion.

Under our regulations on the Appeals Council's procedures, if the Appeals Council decides to review a case in response to a request for review or on its own motion, it may issue a decision or remand the case to an ALJ. The Appeals Council may also dismiss a request for hearing for any reason that the ALJ could have dismissed the request.

A decision by the Appeals Council ''to review'' a hearing-level decision means that the Appeals Council assumes jurisdiction and causes that decision not to be the final decision of the Commissioner of Social Security. A decision that the Appeals Council ''reviews'' will be replaced by a new final decision or dismissal order of the Appeals Council or, if a hearing or other hearing-level proceedings are required, by a decision or dismissal order issued following remand of the case from the Council to an ALJ.

A decision by the Appeals Council to review a case is made when, following a consideration of the case to determine if review is appropriate, the Council issues a notice of its decision to review. The Council's standard notice of review