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The Expanding Role of the Food Distribution Industry into Greater Standardization of Package, Product, Container

The Role of the Department of Commerce Under the Fair Packaging and Labeling Act

Food 70's

Describes duties of the
Secretary of Commerce
under the Fair Packaging
and Labeling Act

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INTRODUCTION

● The Fair Packaging and Labeling Act was enacted primarily to correct economic abuses in the marketplace. It has two distinct features: (1) mandatory labeling provisions which are the responsibility of the Food and Drug Administration and the Federal Trade Commission, and (2) package quantity standardization provisions, that are voluntary in nature, and are the responsibility of the Secretary of Commerce. Congress has clearly set forth in this Act particular duties which the Secretary of Commerce must undertake in cooperation with industry and consumers in achieving the objectives of the Act. I think the declaration of policy in the Law provides the tone and purpose for carrying out those responsibilities. Section 2 of the Act sets forth the declaration of policy as follows:

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.

RESPONSIBILITIES

I would like to outline these responsibilities, indicate how they are

being administered within the National Bureau of Standards, and generally discuss the nature of the program.

We have essentially four duties under this Act:

- (1) Determination of undue proliferation in packaged consumer commodities;
- (2) Assisting in the development of new package quantity patterns through the Voluntary Product Standards procedures of the Department of Commerce or through the less formal process of industry agreements;
- (3) Reporting to Congress with recommendations, both annually and in specific instances where the voluntary standards process does not work; and,
- (4) Cooperating with and providing assistance to State weights and measures officials to bring about uniformity in State and Federal regulations of labeling of consumer commodities.

The particulars of each of these responsibilities and the arrangements made for their administration have been assigned to the Office of Weights and Measures in the National Bureau of Standards.

UNDUE PROLIFERATION

Section 5(d) of the Act states:

Whenever the Secretary of Commerce determines that there is undue proliferation of the weights,

measures, or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed in packages for sale at retail and such undue proliferation impairs the reasonable abilities of consumers to make value comparisons with respect to such consumer commodity or commodities, he shall request manufacturers, packers and distributors of the commodity or commodities to participate in the development of a voluntary product standard for such commodity or commodities under the procedures for the development of voluntary products standards established by the Secretary pursuant to section 2 of the Act of March 3, 1901 (31 St. 1449, as amended, 15 U.S.C. 272). Such procedures shall provide adequate manufacturer, packer, distributor, and consumer representation.

There has been some confusion regarding the responsibility for making determinations of undue proliferation. To clarify this point, it should be noted that the purpose of this section is to identify those situations in which the consumer's reasonable ability to make value comparisons, with respect to a consumer commodity, is impaired because there is undue proliferation of the weights, measures, or quantities in which the commodity is being distributed for sale at retail. This provision does not condemn the proliferation of consumer commodities (no one is suggesting that a diversified market choice is not good in a consumer-oriented economy), does not apply to the performance of the product itself, and does not substitute the Government's judgment of marketplace choices for that of the consumer.

The provision does require us to ascertain whether there is undue proliferation of the weights, measures, or quantities in which consumer commodities are being distributed in packages for retail sale; and whether, because of such undue proliferation, the ability of an objective, reasonable, and prudent consumer to make value comparisons is impaired.

In carrying out this effort, we must necessarily proceed on a case-by-case basis. It is difficult, if not impossible, to state that what is undue proliferation in weights or quantities of one product is the same as that for

all or even one other product. For each product, determinations must be made as to what patterns exist in particular areas, the number of quantities within a reasonable range of sizes, the total marketing pattern, the ease with which price comparisons can be made, the classes of products sold in the weights or quantities in question, and reasonableness of comparing one kind of a product with another for purposes of making a value comparison.

DEVELOPMENT OF PACKAGE QUANTITY PATTERNS

Under the NBS program, the development of new package quantity patterns for consumer commodities has taken one of two forms. Several industries have requested the assistance of the Department of Commerce in the development and publication of formal voluntary standards covering the quantities in which their products are to be offered for sale at retail without a finding of undue proliferation regarding their products. Other industries have decided informally and voluntarily to reduce or simplify the quantities of their particular products without following any formal process.

Requests for the development of formal standards are processed under the published Voluntary Product Standards Procedures of the Department. These Procedures generally provide for representation of producers, distributors, users, and consumers in the development process. In this process, the Department acts as an impartial arbiter in making certain there is general concurrence, that there is no technical or substantive objection which has merit, and in determining that a standard would not be contrary to the public interest or against the law.

The informal method of arriving at simplified patterns has normally involved these steps: (1) Following an initial study, industry representatives are notified by NBS of the possible existence of a proliferation problem (2) informal conferences, involving either all known producers or representatives of all producers lead to a determination by the industry that the public can be served properly with fewer quantities and with a simpler pattern, (3) on the basis of such a determination, producers of a product decide informally to limit their production to a selected quantity pattern, and (4) NBS is informed of

this decision. In all cases, conformance with the decision is voluntary. The aims of the industry are to fulfill the will of the Congress and to remove any probability that a finding of "undue proliferation" might be made by the Department of Commerce-- both without introducing any possible antitrust problem.

Through the informal approach, which is the approach that most frequently has been utilized by industry, package quantity proliferation is reduced more rapidly than would have been possible if the formal process, including undue proliferation determination and voluntary standard development, had been followed. Utilizing both methods, the program has resulted in newly developed quantity patterns for packaged goods in about 40 product categories.

Numerous product categories are not subject to the Act at all, or present no apparent proliferation problem. For example, annual retail sales of packaged consumer commodities approximate \$131 billion, with \$58 billion worth excluded from coverage. Another \$45 billion represents products that are standardized by State law or regulation, or that are packaged in too few quantities to be considered proliferated. This leaves about \$28 billion worth of products subject to the Act. The 40 established package quantity standards represent about 50 percent of the items subject to the proliferation provisions of the FPLA. Discussions and negotiations with industry, concerning an additional 40 percent of the items covered, are at various stages in the standards development process, with the remaining 10 percent under study.

REPORTING TO CONGRESS

When the Department of Commerce makes a formal determination of undue proliferation of a packaged consumer commodity, the FPLA requires the Secretary to request the participation of the particular industry in working out a voluntary standard through the procedures previously mentioned. If this process is unsuccessful, or if a standard is published but not observed, this situation must be reported to Congress with appropriate recommendations. These requirements are set forth in Section 5(e) of the Act as follows:

If (1) after one year after the date on which the Secretary of Commerce first makes the request

of manufacturers, packers, and distributors to participate in the development of a voluntary product standard as provided in subsection (d) of this section, he determines that such a standard will not be published pursuant to the provisions of such subsection (d), or (2) if such a standard is published and the Secretary of Commerce determines that it has not been observed, he shall promptly report such determination to the Congress with a statement of the efforts that have been made under the voluntary standards program and his recommendation as to whether Congress should enact legislation providing regulatory authority to deal with the situation in question.

Reporting to Congress is the final action which the Secretary of Commerce can take, and is intended to be a course of last resort to be used when the process of voluntary agreement or compliance fails. The cooperation from the producer segment has been such that formal findings of undue proliferation and subsequent reports to Congress on lack of cooperation or non-observance of standards have been unnecessary.

In addition to the specific reports required by Section 5(e) the Secretary is required to transmit a general annual report describing the Department activities during the preceding fiscal year. This requirement is common to all three agencies with responsibilities under the Act.

COOPERATION WITH STATE WEIGHTS AND MEASURES OFFICIALS

The Act requires the Secretary of Commerce to transmit to the States copies of regulations promulgated by the Federal Trade Commission and the Food and Drug Administration. He is also directed to furnish the States information and help in promoting uniformity in State and Federal regulations in the labeling of consumer commodities. These duties appear in Section 9(a) which reads:

A copy of each regulation promulgated under this Act shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officer and agencies information and assistance to promote to the greatest practicable

extent uniformity in State and Federal regulations of labeling of consumer commodities.

The National Bureau of Standards has sponsored the National Conference on Weights and Measures. This is a 65-year old organization comprised of State and local weights and measures officials whose main interest is in promoting national uniformity in weights and measures laws and regulations. From the legislative history of the Fair Packaging and Labeling Act, it is clear that Congress intended us to continue to use this organization in helping to achieve the purposes of the Act.

The cooperation function is significant in light of section 12 of the Act which declares it to be the express intent of Congress to supersede State laws which provide less stringent labeling requirements of the net quantity of contents of packages covered by the Act, or to require information different from that contained in section 4 of the Act. The liaison program of the NBS has been successful in bringing about a large degree of uniformity between Federal and State package labeling requirements to make them fully compatible with Federal regulations and another 8 to 10 States are somewhere in the process. It appears to be only a matter of time until full uniformity can be reached. ●

EDITOR'S NOTE:

The discussion following the papers raised these issues:

1. When would the U. S. adopt the metric system?
2. Is standardization a good thing or does it prevent innovation and improvement?
3. Voluntary vs. legal standards
5. Would standardization prevent users of products from getting the amounts they actually need?
6. What are the chances of one uniform vehicle, container, and nomenclature standard?