[COMMITTEE PRINT]

OCTOBER 13, 1966

89TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. ——

FAIR PACKAGING AND LABELING ACT

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——————.—Ordered to be printed

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Mr. STAGGERS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 985]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 985) to regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following: *That this Act may be cited as the "Fair Packaging and Labeling Act".*

DECLARATION OF POLICY

SEC. 2. 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.

PROHIBITION OF UNFAIR AND DECEPTIVE PACKAGING AND LABELING

SEC. 3. (a) It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined in this Act) 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

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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 Act and of regulations promulgated under the authority of this Act.

(b) The prohibition contained in subsection (a) 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.

REQUIREMENTS AND PROHIBITIONS

SEC. 4. (a) No person subject to the prohibition contained in section 3 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 6 of this Act 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 is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights, that is, packages with no fixed weight pattern.

(b) No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a), but nothing in this subsection or in paragraph (2) of subsection (a) shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: Provided, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

ADDITIONAL REGULATIONS

SEC. 5. (a) The authority to promulgate regulations under this Act is vested in (A) the Secretary of Health, Education, and Welfare (referred to hereinafter as the "Secretary") with respect to any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); and (B) the Federal Trade Commission (referred to hereinafter as the "Commission") with respect to any other consumer commodity.

(b) If the promulgating authority specified in this section finds that, because of the nature, form, or quantity of a particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements otherwise applicable under section 4 of this Act is impracticable or is not necessary for the adequate protection of consumers, the Secretary or the Commission (whichever the case may be) shall promulgate regulations exempting such commodity from those requirements to the extent and under such conditions as the promulgating authority determines to be consistent with section 2 of this Act.

(c) Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

(1) establish and define standards for characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity;

(2) regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, of any

printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(3) require that the label on each package of a consumer commodity (other than one which is a food within the meaning of section 201(f) of the Federal Food, Drug, and Cosmetic Act) bear (A) the common or usual name of such consumer commodity, if any, and (B) in case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

(4) prevent the nonfunctional-slack-fill of packages containing consumer commodities.

For purposes of paragraph (4) of this subsection, a package shall be deemed to be nonfunctionally slack-filled if it is filled to substantially less than its capacity for reasons other than (A) protection of the contents of such package or (B) the requirements of machines used for enclosing the contents in such package.

(d) 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 ability 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 Stat. 1449, as amended; 15 U.S.C. 272). Such procedures shall provide adequate manufacturer, packer, distributor, and consumer representation.

(e) 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.

PROCEDURE FOR PROMULGATION OF REGULATIONS

SEC. 6. (a) Regulations promulgated by the Secretary under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, pursuant to the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)). Hearings authorized or required for the promulgation of any such regulations by the Secretary shall be conducted by the Secretary or by such officer or employee of the Department of Health, Education, and Welfare as he may designate for that purpose.

(b) *Regulations promulgated by the Commission under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e) (f), and (g)) in the same manner, and with the same effect, as if such proceedings were taken by the Secretary pursuant to subsection (a) of this section. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.*

(c) *In carrying into effect the provisions of this Act, the Secretary and the Commission are authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession or the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.*

(d) *No regulation adopted under this Act shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act, nor shall any regulation under this Act preclude the orderly disposal of packages in inventory or with the trade as of the effective date of such regulation.*

ENFORCEMENT

SEC. 7. (a) *Any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), and which is introduced or delivered for introduction into commerce in violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, shall be deemed to be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act, but the provisions of section 303 of that Act (21 U.S.C. 333) shall have no application to any violation of section 3 of this Act.*

(b) *Any violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, with respect to any consumer commodity which is not a food, drug, device, or cosmetic, shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement under section 5(b) of the Federal Trade Commission Act.*

(c) *In the case of any imports into the United States of any consumer commodity covered by this Act, the provisions of sections 4 and 5 of this Act shall be enforced by the Secretary of the Treasury pursuant to section 801 (a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381).*

REPORTS TO THE CONGRESS

SEC. 8. *Each officer or agency required or authorized by this Act to promulgate regulations for the packaging or labeling of any consumer commodity, or to participate in the development of voluntary product standards with respect to any consumer commodity under procedures referred to in section 5(d) of this Act, shall transmit to the Congress in January of each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this Act during the preceding fiscal year.*

COOPERATION WITH STATE AUTHORITIES

SEC. 9. (a) 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 officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health, Education, and Welfare under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

DEFINITIONS

SEC. 10. For the purposes of this Act—

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act), 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 for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

(1) any meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832–833; 21 U.S.C. 151–157), commonly known as the Virus-Serum-Toxin Act;

(3) any drug subject to the provisions of section 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1) and 356);

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.); or

(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551–1610).

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231–233), the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234–236),

the Act of August 31, 1916 (39 Stat. 673, as amended; 15 U.S.C. 251–256), or the Act of May 21, 1928 (45 Stat. 685, as amended; 15 U.S.C. 257–257i).

(c) The term "label" means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity.

(d) The term "person" includes any firm, corporation, or association.

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States not organized with a legislative body, but shall not include exports to foreign countries.

(f) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

SAVING PROVISION

SEC. 11. Nothing contained in this Act shall be construed to repeal, invalidate, or supersede—

(a) the Federal Trade Commission Act or any statute defined therein as an antitrust Act;

(b) the Federal Food, Drug, and Cosmetic Act; or

(c) the Federal Hazardous Substances Labeling Act.

EFFECT UPON STATE LAW

SEC. 12. It is hereby declared that it is the express intent of Congress to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this Act which are less stringent than or require information different from the requirements of section 4 of this Act or regulations promulgated pursuant thereto.

EFFECTIVE DATE

SEC. 13. This Act shall take effect on July 1, 1967: Provided, That the Secretary (with respect to any consumer commodity which is a food, drug, device, or cosmetic, as those terms are defined by the Federal Food, Drug, and Cosmetic Act), and the Commission (with respect to any other consumer commodity) may by regulation postpone, for an additional twelve-month period, the effective date of this Act with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest.

And the House agree to the same.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 985) to regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House amendment strikes out all of the Senate bill after the enacting clause and inserts a substitute. The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for both the Senate bill and the House amendment. The differences between the House amendment and the conference substitute are described below, except for clarifying, technical, and conforming changes.

"PRICE" VERSUS "VALUE" COMPARISONS

Section 2 of the Senate-passed bill states that the label on packages of consumer commodities should facilitate "price" comparisons, and section 5(c) of the Senate-passed bill provides that the discretionary regulatory requirements would be applicable where necessary to facilitate "price" comparisons. In both instances, the House amendment uses the term "value" in lieu of "price." The conference substitute adopts the House version and uses the term "value" in both instances. The conferees wish to make clear that the concept of "value comparison" is broader than the concept of "price comparison" and includes the latter within the former as a very important factor in making a value comparison.

STATEMENT OF NET QUANTITY

The Senate-passed bill provided that the statement of net quantity, if expressed in terms of weight or liquid measure, on any package of a consumer commodity containing less than 4 pounds or 1 gallon, would have to be expressed in ounces or in whole units of pounds, pints, or quarts. The House amendment, on the other hand, provided that in the case of such a package, the statement of net quantity 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.

The House amendment also made special provisions for "random packages." Random packages, under the House amendment, would have the statement of net quantity set forth in pounds and decimal fractions of the pound carried out to not more than two decimal places to permit the continued use of automatic weighing machines.

The House amendment also specified the statement of net quantity which must appear on packages of consumer commodities which are labeled in terms of linear or area measure. The Senate-passed bill contained no special provisions with respect to these packages.

The conference substitute is the same in all these respects as the House amendment.

SERVINGS

Under section 5(c)(2) of the Senate-passed bill, the appropriate promulgating authority was given authority to establish and define the net quantity of any commodity which would constitute a serving, if that commodity was distributed to retail purchasers in a package with a label which bore a representation as to the number of servings provided by the net quantity of the contents contained in the package. In the same context, the House amendment provided that the promulgating authority could require that 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 also bear a statement of the net quantity of each such serving.

The conference substitute adopts the language of the House amendment but transfers it from section 5(c) (the discretionary provisions) to section 4(a) of the legislation (the mandatory provisions). Thus, under the conference substitute, the appropriate promulgating authority would be required to issue regulations providing that 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 also bear a statement of the net quantity of each such serving.

INGREDIENTS

Section 5(c)(4) of the Senate-passed bill would have authorized each promulgating authority to require that information with respect to the ingredients and composition of any consumer commodity be placed upon the label of the package containing that commodity. The House amendment would authorize each promulgating authority to require that the label of each package containing a nonfood bear (A) the common or usual name of such commodity and (B) in case such commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance.

The conference substitute is the same in this respect as the House amendment.

SLACK-FILL

The House amendment would authorize the promulgating authority to prevent the nonfunctional slack-fill of packages containing consumer commodities. The Senate-passed bill contained no comparable provisions.

The conference substitute is the same in this respect as the House amendment.

STANDARDIZATION OF WEIGHTS AND MEASURES

Section 5(d) of the Senate-passed bill provides that the promulgating authority may determine that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons. In case of such a determination, unless the industry adopts voluntary product standards, the promulgating authority may issue regulations effective to establish reasonable weights or quantities, and fractions or multiples thereof, in which any such consumer commodity would have to be packaged in order to be distributed in commerce for retail sale.

The House amendment would authorize the Secretary of Commerce to determine that there is undue proliferation of the weights, measures, or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed, and such undue proliferation impairs the reasonable ability of consumers to make value comparisons with respect to such consumer commodity or commodities. In such a case, the Secretary is directed to request manufacturers, packers, and distributors of the commodity or commodities to participate in the development of a voluntary product standard for such a commodity or commodities. If, after 1 year after the date of such request, the Secretary determined that such a standard will not be published or, if such a standard has been published, that it has not been observed, he would be required to 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.

The conference substitute is the same in this respect as the House amendment.

FEDERAL PREEMPTION OF STATE LAWS

Section 12 of the Senate-passed bill provides that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of the contents of the package of any consumer commodity covered by the act which differs from the requirements of section 4 of the act or regulations promulgated pursuant thereto.

The House amendment would preempt the laws of the States or political subdivisions insofar as they may now or hereafter provide for the labeling of net quantity of contents of the package of any consumer commodity covered by the act which are less stringent than or require information different from the requirements of section 4 of the act or regulations promulgated pursuant thereto. Language from the House report explaining these provisions is pertinent. It provides that preemption would take place to the extent that "State laws or State regulations with respect to the labeling of net quantity of contents of packages impose inconsistent or less stringent requirements than are imposed under section 4 of this legislation." The conference substitute is the same in this respect as the House amendment.

EFFECTIVE DATE

Section 13 of the Senate-passed bill provides that it shall take effect on the first day of the sixth month beginning after the date of its enactment.

The House amendment provides that the legislation shall take effect on July 1, 1967. Both bills provide authority for extending the effective date for a period of 1 year with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest.

The conference substitute is the same in this respect as the House amendment.

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