

**FEDERAL TRADE COMMISSION
16 CFR Part 410**

**Deceptive Advertising as to Sizes of Viewable Pictures
Shown by Television Receiving Sets**

AGENCY: Federal Trade Commission.

ACTION: Confirmation of rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) has completed its regulatory review of the Rule concerning Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (“Rule” or “Picture Tube Rule”), as part of the Commission’s systematic review of all current Commission regulations and guides, and has determined to retain the Rule in its current form.

DATES: This action is effective as of [insert date of publication in the *Federal Register*].

ADDRESSES: Requests for copies of this notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. The notice also is available on the Internet at the Commission’s website, <http://www.ftc.gov>.

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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 as well as their

regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission.

II. Background

The Commission's Picture Tube Rule, like the other trade regulation rules issued by the Commission, "define[s] with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce. Such rules may include requirements prescribed for the purpose of preventing such acts or practices. A violation of a rule shall constitute an unfair or deceptive act or practice in violation of section 5(a)(1) of the [Federal Trade Commission] Act, unless the Commission otherwise expressly provides in its rule." 16 CFR 1.8.

The Picture Tube Rule, promulgated in 1966, sets forth the appropriate means for disclosing the method by which the dimensions of television screens are measured, when this measurement is included in any advertisement or promotional material for the television set. The purpose of the Rule is to prevent deceptive claims regarding the size of television screens and to encourage uniformity in measuring television screens, thereby aiding comparison shopping. Under the Rule, any representation of the screen size must be based on the horizontal dimension of the actual, viewable picture area, unless the alternative method of measurement is clearly and conspicuously disclosed in close proximity to the size designation. The Rule notes that the horizontal measurement must not take into account any curvature of the tube. Further, disclosing the method of measurement in a footnote rather than in the body of the advertisement does not constitute a disclosure in close proximity to the measurement. The Rule includes examples of both proper and improper representations of size descriptions.

The Rule was last subject to regulatory review in 1994. At that time, the Commission decided to retain the Rule, concluding that it continues to be valuable both to consumers and businesses. The Commission, however, amended the Rule to clarify some of its compliance

illustrations, provide metric equivalents for the measurements stated in inches, and add a new Note 3 to explain that the inclusion of metric figures is for information purposes only and does not impose a requirement on the industry to use metric measurements. 59 FR 54809 (Nov. 2, 1994).

Since the Rule was last subject to regulatory review and amended in 1994, broadcasting and television technology have advanced significantly, and an array of new types of televisions are available in the marketplace. The technological change with the closest nexus to the Rule is the introduction of digital television, including high definition television, and the advent of new wider screen televisions to display these enhanced digital pictures.¹ New television display technologies available today include thin, flat panel televisions with either liquid crystal or plasma display panels. In addition, there have been advances in the quality and popularity of front and rear, big screen, projection televisions.

On April 7, 2005, the Commission published a *Federal Register* notice (“FRN”) seeking comment on the Rule as part of the Commission’s ongoing project to review periodically its rules and guides to determine their current effectiveness and impact (70 FR 17623). This FRN sought comment on the continuing need for the Rule, the costs and benefits of the Rule, what changes in the Rule would increase its benefits to purchasers and how those changes would affect compliance costs, and whether technological or marketplace changes have affected the Rule.

¹ Wider screen televisions have a higher aspect ratio than traditional televisions (the aspect ratio is the ratio between the width of the picture and the height of the picture). Traditional televisions have an aspect ratio of 4 by 3 (1.33 to 1) while wider screen high definition televisions have an aspect ratio of 16 by 9 (1.85 to 1).

III. Regulatory Review Comments

The Commission received six comments in response to the FRN.² Comments were received from five individuals³ and from the Consumer Electronics Association (“CEA”). CEA states that it is the principal U.S. trade association of the consumer electronics and information technologies industries. According to CEA, its more than 2,000 member companies include the world’s leading consumer electronics manufacturers.

A. Support for Retaining the Rule

The comments indicated generally that the Picture Tube Rule should remain in effect, although, as explained below, each comment recommended revising the Rule in one or more ways. One commenter, CEA, indicated that the Rule has provided benefits to consumers and imposed small costs on entities subject to the Rule’s requirements. In particular, CEA indicated that the Rule requires manufacturers to provide useful information to consumers by allowing a fair comparison of televisions and usefully defines size as the television’s viewable area. Although CEA argued that the Rule is unnecessarily burdensome because marketers commonly advertise diagonal measurements rather than horizontal measurements and therefore must add the word “diagonally” or a comparable disclosure to product literature and advertising, CEA also

² The comments are cited in this notice by the name of the commenter. All Rule review comments are on the public record and are available for public inspection in the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The comments also are available on the Internet at the Commission’s website, <http://www.ftc.gov>.

³ The Commission’s request for public comment elicited comments from the following five individuals: (1) John Woelflein (“Woelflein”), (2) Gavin Young (“Young”), (3) Michael Payne (“Payne”), (4) James Scott Hudnall (“Hudnall”), and (5) William Hooper (“Hooper”).

stated that the additional printing cost of adding such disclosures is small.⁴ None of the commenters advocated repeal of the Rule.

In light of the comments received, and in the absence of any opposition, the Commission concludes that there is a continuing need for the Rule. The comments provide evidence that the Rule serves a useful purpose, while imposing minimal costs on the industry, and the Commission has no evidence to the contrary. In the Commission's view, the Rule ensures the flexibility needed by the industry to use the method of measuring television screens it prefers, while making certain that consumers have enough information regarding screen size to make informed purchasing decisions. While changing the "default" measurement from "horizontal" to the more commonly used "diagonal" as CEA proposed, or requiring marketers to disclose screen size in square inches or metric units as some other commenters proposed, might improve the Rule, the cost of doing so would likely exceed the benefit. Accordingly, the Commission has determined to retain the Picture Tube Rule in its current form.

B. Suggested Changes to the Rule Regarding the Manner of Measurement

Although the comments supported preserving the Picture Tube Rule, all of them proposed changes. CEA urged the Commission to eliminate the horizontal dimension as the Rule's default measurement, which, when used, does not require a disclosure of the method of measurement in close proximity to the size designation.⁵ Currently, the advertised dimensions of the television screen's viewable picture area must reflect the horizontal measurement unless the alternative method of measurement is clearly and conspicuously disclosed in close proximity to the size designation. According to CEA, however, the prevailing practice within the industry is to use the diagonal plane to measure the screen. Thus, CEA urged the Commission to amend the

⁴ CEA at 3.

⁵ CEA at 1.

Rule to reflect current industry practice. Specifically, CEA proposed requiring marketers to make any claim regarding the size of the television screen using a diagonal measurement, unless they disclose clearly and conspicuously the alternative method of measurement.⁶ In support of its recommendation, CEA identified references to television screen sizes, as measured diagonally across the picture viewing area, in Federal Communications Commission regulations announcing the digital television reception capability implementation schedule (47 CFR 15.117), and in flat-panel-screen color television listings in Chapter 85 of the Harmonized Tariff Schedule of the United States.⁷

Three other commenters, however, urged the Commission to amend the Rule to require marketers to describe the size of the television screen's viewable picture area in terms of square inches or square metric units.⁸ The commenters stated that such a disclosure would make it easier for consumers to compare the picture areas of conventional television screens with the picture areas of the new wide screen televisions that are available in the marketplace.⁹ None of the commenters argued that this change is necessary to prevent deception or provided the Commission with any market research or other data bearing on how consumers view the various methods of measuring television screens.

⁶ CEA also proposed a few minor wording changes to the Rule and the elimination of several examples (*e.g.*, substituting the word "display" for the word "picture" and dropping examples of improper size descriptions). In addition, it proposed adding a statement that "This Rule assumes a display with a 4 by 3 aspect ratio. For displays with a 16 by 9 aspect ratio, the diagonal measurement may be followed with a suffix 'W.'" CEA at Appendix B. CEA did not explain the rationale for these proposed changes. Given that CEA proposed these changes without providing any explanation or supporting evidence, the Commission has determined not to make any of these proposed changes to the Rule.

⁷ CEA at 5.

⁸ One of them also proposed that the Rule require disclosure of the television's aspect ratio. Hudnall at 1.

⁹ Young at 1; Hudnall at 1; and Hooper at 1.

When the Commission initially promulgated the Rule in 1966, most television manufacturers measured the dimensions of their television sets diagonally, just as they do today. Thus, the horizontal dimension was not chosen based on a belief that it was the industry norm. Rather, the Commission found that almost all rectangular objects were measured horizontally and vertically. Television screens were the only rectangular-shaped commodities that were measured diagonally. Thus, the Commission reasoned, if a rectangular screen was measured in the usual manner for similarly-shaped objects, then no disclosure was necessary.¹⁰ Moreover, the television industry has adopted the Rule's disclosure requirements as part of its routine business practice, although the industry generally does not use the Rule's default horizontal measurement method. In 1994, the Commission rejected a similar proposal to amend the Rule to adopt the diagonal measurement method as the standard in the Rule (59 Fed. Reg. 54809, 54811 (Nov. 2, 1994)).

The Commission is not aware of any evidence that revising the Rule to require a disclosure when a measurement other than the diagonal dimension is used, or to require marketers to describe screen size in square inches or metric units, would provide a tangible benefit to consumers. Moreover, revising the Rule to make the diagonal measurement the default measurement as CEA proposed could potentially cause confusion to the extent consumers accustomed to seeing screen measurements described as diagonal might mistakenly believe the measurements not described as diagonal are in fact based on horizontal or area measurements. The commenters failed to submit convincing evidence that their proposed changes would confer net benefits on consumers or the industry, or that the Rule as amended would better protect consumers from deception.

¹⁰ 31 FR 3342 (March 3, 1966).

The Commission believes that the Rule is sufficiently flexible to allow industry to use the method it prefers for measuring television screen sizes to meet consumer expectations and compete effectively, is easy to comply with at minimal cost, and ensures that advertising contains sufficient information on screen size to allow consumers to make informed purchasing decisions. If marketers determine they can compete more effectively by disclosing screen size measured in square inches or metric units, the Rule allows them to do so. Thus, expending additional resources at this time to seek further comment and testimony at hearings on the methods of measuring television screens is not justified. The absence of evidence indicating a need to amend the Rule and the risk, however small, that amending the Rule as CEA proposed would cause confusion argues against conducting a rulemaking proceeding to re-write the Rule. The Commission has therefore determined not to amend the Rule's disclosure requirements at this time.

C. Suggested Changes to the Rule Regarding Metric Disclosures

Five individual commenters urged the Commission to amend the Rule to require the industry to use metric measurements, in conformance with the Metric Conversion Act.¹¹ As discussed above, in 1994, the Commission amended the Rule to provide metric equivalents for the measurements stated in inches in the Rule's examples. The Commission noted further that inclusion of metric figures in the Rule was for information purposes only and did not impose a requirement on the industry. In the Commission's view, the Rule is sufficiently flexible to

¹¹ Woelflein at 1; Young at 1; Payne at 1; Hudnall at 1; and Hooper at 1. Under Executive Order 12770 of July 25, 1991 (56 FR 35801), and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205), all federal agencies are required to use the SI metric system of measurement in all procurements, grants and other business-related activities (which include rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

permit industry members to use metric measurements, if they choose to do so to compete effectively in the global marketplace. Accordingly, the Commission has determined not to amend the Rule in this manner.

D. Suggested Changes to the Rule Regarding Rounding

CEA requested that the Commission amend the Rule to address the issue of rounding fractional television screen size dimensions to whole numbers to provide consistency within the industry.¹² In support of its request, CEA referenced an Electronics Industries Alliance (“EIA”) statement that specifies a system for rounding television screen sizes to whole numbers. According to CEA, the statement provides, in part, that, “A tube having its screen size within plus or minus one-half centimeter shall be assigned that integer. A tube falling exactly on a one-half centimeter shall be assigned the next larger integer.”¹³ CEA recommended that the Commission amend the Rule to adopt an approach to rounding consistent with this statement.

In the absence of consumer research or other evidence on the record in this proceeding that revising the Rule as proposed by CEA would not result in deception in connection with disclosing the viewable picture area of a television screen, the Commission has determined not to amend the Rule at this time to address the issue of rounding.

IV. Conclusion

For the reasons described above, the Commission has determined to retain the current Rule and is terminating this review.

List of Subjects in 16 CFR Part 410

¹² CEA at 4.

¹³ See Worldwide Type Designation System for TV Picture Tubes and Monitor Tubes, ECA-TEP-106B. EIA is a partnership of electronic and high-tech associations and companies whose mission is promoting the market development and competitiveness of the U.S. high-tech industry. EIA’s nearly 1,300 member companies represent the full range of consumer electronic products.

Advertising, Picture tubes, Television sets, Trade practices.

Authority: 15 U.S.C. 41-58.

By direction of the Commission.

Donald S. Clark
Secretary