§ 615.5143 Management of ineligible and unsuitable investments.

(a) *Investments ineligible when purchased.* Investments that do not satisfy the eligibility criteria set forth in § 615.5140 at the time of purchase are ineligible. You may not purchase ineligible investments. If you determine that you have purchased an ineligible investment, you must notify us promptly in writing after such determination. You must divest of the investment no later than 60 calendar days after you determine that the investment is ineligible unless we approve, in writing, a plan that authorizes you to divest the investment over a longer period of time. Until you divest of the investment:

(1) It must not be used to fund the liquidity reserve necessary to meet the liquidity reserve requirement in § 615.5134;

(2) It must be included in the § 615.5132 investment portfolio limit; and

(3) It must not be included as collateral under § 615.5050 or net collateral under § 615.5301(c).

(b) *Investments that no longer satisfy eligibility criteria or are unsuitable.* If an investment (that satisfied the eligibility criteria set forth in § 615.5140 when purchased) no longer satisfies the eligibility criteria, or if an investment is not suitable because it does not fit the risk tolerance established in your board policy pursuant to § 615.5133(c), you may continue to hold it, subject to the following requirements:

(1) You must notify FCA promptly in writing upon your determination that the investment no longer satisfies the eligibility criteria contained in § 615.5140 or is not suitable;

(2) You must not use the investment to fund the liquidity reserve necessary to meet the liquidity reserve requirement in § 615.5134;

(3) You must include the investment in the § 615.5132 investment portfolio limit;

(4) You must include the investment as collateral under § 615.5050 and net collateral under § 615.5301(c) at the lower of cost or market value; and

(5) You must develop a plan to reduce the investment's risk to you.

(c) *Board reporting requirements.* You must report to your board at least quarterly on the following:

(1) The status and performance of each investment described in paragraphs (a) and (b) of this section.

(2) The impact that any investments described in paragraphs (a) and (b) of this section may have on your capital, earnings, liquidity, and collateral position; and

(3) The terms and status of any required divestiture plan or risk reduction plan.

(d) *Reservation of authority.* FCA retains the authority to require you to divest of any investment at any time for safety and soundness reasons. The timeframe set by FCA will consider the expected loss on the transaction (or transactions) and the impact on your financial condition and performance.

Subpart F—Property, Transfers of Capital, and Other Investments

9. Section 615.5174 is amended by:

a. Removing the reference ''§ 615.5131(f)'' and adding in its place, the reference ''§ 615.5131'' in paragraph (a); and

b. Revising paragraph (d); and

c. Adding a new paragraph (e) to read as follows:

§ 615.5174 Farmer Mac securities.

* * * * *

(d) *Stress Test.* You must perform stress tests, in accordance with § 615.5133(f)(2), on mortgage securities, issued or guaranteed by Farmer Mac, that are backed by loans that you did not originate.

(e) *You.* Means a Farm Credit bank, association, or service corporation.

Dated: August 12, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2011–20965 Filed 8–17–11; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 424

Retail Food Store Advertising and Marketing Practices Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: As part of the Commission's systematic review of all current FTC rules and guides, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC's rule for ''Retail Food Store Advertising and Marketing Practices'' (''Unavailability Rule'' or ''Rule'').

DATES: Comments must be received on or before October 19, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''16 CFR Part 424—Retail Food Store Advertising Rule, Project No. P104203'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/unavailabilityruleanpr,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jock Chung, (202) 326–2984, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Unavailability Rule states that it is an unfair or deceptive act or practice for ''retail food stores'' to advertise ''food, grocery products or other merchandise'' at a stated price if those stores do not have the advertised products in stock and readily available to consumers during the effective period of the advertisement. The original Rule, promulgated in 1971,[1] permitted food retailers to defend against a charge of failure to have items available by maintaining records showing that the advertised items were timely ordered and delivered in quantities sufficient to meet reasonably anticipated demand.[2]

In 1989, after a comment period and public hearings, the Commission concluded that the costs of complying with the original Rule exceeded the benefits to consumers and amended the Rule.[3] The Rule now provides that even if stores do not have the advertised products in stock and readily available during the effective period of their advertisement, they comply with the Rule if ''the advertisement clearly and adequately discloses that supplies of the advertised products are limited or the advertised products are available only at some outlets.''[4] In addition, the amendment provides that it would not be a rule violation if: (1) The store ordered the advertised products in adequate time for delivery in quantities

[1] *Federal Trade Commission: Retail Food Store Advertising and Marketing Practices: Statement of Basis and Purpose: The Rule,* 36 FR 8777 (May 13, 1971). The Rule became effective on July 12, 1971.

[2] *Id.* at 8781.

[3] *Federal Trade Commission: Amendment to Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices,* 54 FR 35456 (Aug. 28, 1989).

[4] *Id.* at 35467.

sufficient to meet reasonably anticipated demand; (2) the store offers a ''raincheck'' for the advertised products; (3) the store offers a comparable product at the advertised price or at a comparable price reduction; or (4) the store offers other compensation at least equal to the advertised value.[5] The Commission stated that the amended Rule ''will not significantly reduce consumer protection because injury caused by such instances of unexpected unavailability * * * will be substantially mitigated by the amended Rule's requirement that consumers be offered rainchecks or comparable substitute items.'' [6]

II. Regulatory Review Program

The Commission reviews its rules and guides periodically. These reviews seek information about the costs and benefits of the rules and guides as well as their regulatory and economic impact. These reviews assist the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission now solicits comments on, among other things, the economic impact of, and the continuing need for, the Unavailability Rule; the benefits of the Rule to consumers purchasing products at retail food stores; and the burdens the Rule places on firms subject to its requirements.

III. Request for Comments

The Commission solicits comments on the following specific questions related to the Unavailability Rule:

(1) Is there a continuing need for the Rule? Why or why not?

(2) What benefits has the Rule provided to consumers, or what significant costs has the Rule imposed on consumers? Provide any evidence that supports your position.

(3) What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs to consumers?

(a) Provide any evidence that supports your proposed modifications.

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(4) What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers? Provide any evidence that supports your position.

(5) What benefits, if any, has the Rule provided to businesses, or what significant costs, including costs of compliance, has the Rule imposed on businesses, particularly small businesses? Provide any evidence that supports your position.

(6) What modifications, if any, should be made to the Rule to increase its benefits or reduce its costs to businesses, particularly small businesses?

(a) Provide any evidence that supports your proposed modifications.

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(7) Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

(8) Provide any evidence concerning whether any of the Rule's provisions are no longer necessary. Explain why these provisions are unnecessary.

(9) What potentially unfair or deceptive practices, not covered by the Rule, concerning price advertising of products by retail food stores are occurring in the marketplace?

(a) Provide any evidence, such as empirical data, consumer perception studies, or consumer complaints, that demonstrates the extent of such practices.

(b) Provide any evidence that demonstrates whether such practices cause consumer injury.

(c) With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?

(10) Should the Commission broaden the Rule to include stores not currently covered, such as drugstores, department stores, electronics retailers, etc.? Provide any evidence that supports your position.

(11) What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions?

(a) Provide any evidence that supports your position.

(b) How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(12) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) Provide any evidence that supports your position.

(b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

(c) Provide any evidence concerning whether the Rule has assisted in promoting national consistency with respect to the advertising by retail food stores of products for sale at a stated price.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 19, 2011. Write ''16 CFR Part 424—Retail Food Store Advertising Rule, Project No. P104203'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR

[5] *Id.* at 35467–35468.

[6] *Id.* at 35457. Although the majority of the Commission voted to amend the Rule, Commissioner Calvani dissented, stating that ''existing market forces adequately police unavailability, and * * * therefore, no Federal Trade Commission rule is necessary, amended or otherwise.'' *Id.* at 35468. Conversely, Commissioner Strenio dissented, stating that there was ''insufficient evidence * * * to conclude that these changes will result in net consumer benefits;'' thus, he could not support these amendments. *Id.*

4.9(c).[7] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/unavailabilityruleanpr,* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''16 CFR Part 424—Retail Food Store Advertising Rule, Project No. P104203'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 19, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

List of Subjects in 16 CFR Part 424

Advertising, Foods, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–21020 Filed 8–17–11; 8:45 am]

BILLING CODE 6750–01–P

[7] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[REG–112805–10]

RIN 1545–BJ39

Branded Prescription Drug Fee

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the branded prescription drug fee imposed by the Affordable Care Act (ACA). The regulations affect persons engaged in the business of manufacturing or importing certain branded prescription drugs. The text of the temporary regulations also serves as the text of the proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by November 16, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–112805–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–112805–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–112805–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Celia Gabrysh at (202) 622–3130; concerning submissions of comments and requests for a hearing *Richard.A.Hurst@irscounsel.treas.gov*, (202) 622–7180 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned control number 1545–2209.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, *Attn:* IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 17, 2011. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

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

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

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

The collection of information in this proposed regulation is in § 51.7. This information is necessary to evaluate whether an error report regarding a preliminary fee calculation is valid and justifies an adjustment to the preliminary fee calculation. The likely respondents are manufacturers and importers of branded prescription drugs.

Estimated total annual reporting and/or recordkeeping burden: 1800 hours.

Estimated annual burden per respondent/recordkeeper: 40 hours.

Estimated number of respondents and/or recordkeepers: 45.

Estimated frequency of responses: Annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** add a new part, part 51, to subchapter D, Miscellaneous