

thirds of the producers who participated in a referendum on the question of approval and who, during the period of August 1, 2012, through July 31, 2013, have been engaged within the production area in the production of such kiwifruit, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

#### Order Relative To Handling

*It is therefore ordered,* That on and after the effective date hereof, all handling of kiwifruit grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the order contained in the proposed rule issued by the Administrator on July 29, 2013, and published in the **Federal Register** on August 2, 2013 (78 FR 46823), shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

#### List of Subjects in 7 CFR Part 920

Marketing agreements, Kiwifruit, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

#### PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Revise § 920.27 to read as follows:

##### § 920.27 Alternate members.

An alternate member of the committee, during the absence of the member for whom that individual is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event both a member and his or her alternate are unable to attend a committee meeting, the committee may designate any other alternate member from the same district to serve in such member's place and stead. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

■ 3. Revise § 920.32(a) to read as follows:

##### § 920.32 Procedure.

(a) Eight members of the committee, or alternates acting for members, shall

constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided*, That actions of the committee with respect to expenses and assessments, production and postharvest research, market research and development, or recommendations for regulations pursuant to §§ 920.50 through 920.55, of this part shall require at least eight concurring votes.

\* \* \* \* \*

■ 4. Add § 920.45 to read as follows:

##### § 920.45 Contributions.

The committee may accept voluntary contributions, but these shall only be used to pay expenses incurred pursuant to § 920.47 and § 920.48. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

■ 5. Add § 920.47 to read as follows:

##### § 920.47 Production and postharvest research.

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving research designed to assist or improve the efficient production and postharvest handling of kiwifruit.

■ 6. Add § 920.48 to read as follows:

##### § 920.48 Market research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of kiwifruit.

Dated: May 22, 2014.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2014–12327 Filed 5–27–14; 8:45 am]

**BILLING CODE P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 301

#### Regulations Under the Fur Products Labeling Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission amends its Regulations under the Fur Products Labeling Act to update the Fur Products Name Guide, provide more labeling flexibility, incorporate Truth in Fur Labeling Act provisions, and conform the guaranty

provisions to those governing textiles. The Commission does not change the required name for *nyctereutes procyonoides* fur products. Labels will continue to describe this animal as “Asiatic Raccoon.”

**DATES:** The amendments published in this document will become effective November 19, 2014.

**FOR FURTHER INFORMATION CONTACT:** Matthew Wilshire, (202) 326–2976, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

After considering comments on proposed amendments to the Rules and Regulations (“Fur Rules” or “Rules”) under the Fur Products Labeling Act (“Fur Act” or “Act”), the Federal Trade Commission (“FTC” or “Commission”) adopts those amendments with minor changes. The final amendments update the Fur Products Name Guide (“Name Guide”), provide businesses with more flexibility in labeling, incorporate the provisions of the Truth in Fur Labeling Act (“TFLA”), and conform the Rules’ guaranty provisions to those governing textile products. The amendments do not change the Guide’s name for *nyctereutes procyonoides*. The name “Asiatic Raccoon” best identifies this animal for fur consumers. The final rules also do not adopt the proposed annual renewal requirement for continuing guaranties.

This supplementary information section first provides background on the Fur Act and Rules, the Name Guide, TFLA, and this rulemaking. Next, it summarizes the comments. Finally, it analyzes those comments and discusses the amendments.

##### II. Background

###### A. The Fur Act and Rules

The Fur Act prohibits misbranding and false advertising of fur products, and requires labeling of most fur products.<sup>1</sup> Pursuant to this Act, the Commission promulgated the Fur Rules.<sup>2</sup> These Rules set forth disclosure requirements that assist consumers in making informed purchasing decisions. Specifically, the Fur Act and Rules require manufacturers, dealers, and retailers to label products made entirely or partly of fur. These labels must disclose: (1) The animal’s name as provided in the Name Guide; (2) the presence of any used, bleached, dyed, or

<sup>1</sup> 15 U.S.C. 69, *et seq.*

<sup>2</sup> 16 CFR Part 301.

otherwise artificially colored fur; (3) that the garment is composed of, among other things, paws, tails, bellies, sides, flanks, or waste fur, if that is the case; (4) the name or Registered Identification Number of the manufacturer or other party responsible for the garment; and (5) the fur's country of origin.<sup>3</sup> In addition, manufacturers must include an item number or mark on the label for identification purposes.<sup>4</sup>

The Rules also include detailed labeling specifications. For example, the Rules specify an exact label size of 1.75 inches by 2.75 inches,<sup>5</sup> require disclosures in a particular order,<sup>6</sup> and prohibit non-FTC information on the front of the label.<sup>7</sup>

The Fur Act and Rules also provide for separate and continuing guaranties.<sup>8</sup> These documents allow an entity to provide a guaranty certifying that the products it manufactures or transfers are not mislabeled or falsely advertised or invoiced. Separate guaranties specifically designate particular fur products.<sup>9</sup> Continuing guaranties, which guarantors file with the Commission, apply to "any fur product or fur handled by a guarantor" and are valid indefinitely.<sup>10</sup> The Act provides that an entity that receives a guaranty in good faith will not generally be liable for violations related to the guaranteed goods.<sup>11</sup>

The Fur Act authorizes guaranties only from persons "residing in the United States." Thus, businesses that buy from manufacturers or suppliers that have no representative in the United States cannot obtain a guaranty. To address this issue, the Commission announced an enforcement policy statement in January 2013.<sup>12</sup> The policy states that the Commission will not bring enforcement actions against retailers that: (1) Cannot legally obtain a guaranty under the Fur Act; (2) do not embellish or misrepresent claims provided by the manufacturer; and (3) do not market the products as private label products, unless the retailers knew or should have known that the

marketing of the products would violate the Act or Rules.

#### B. The Name Guide

The Fur Act requires the Commission to maintain "a register setting forth the names of hair, fleece, and fur-bearing animals."<sup>13</sup> The Act further requires that these names "be the true English names for the animals in question, or in the absence of a true English name for an animal, the name by which such animal can be properly identified in the United States."<sup>14</sup> The Name Guide lists animals by common name and the species each name describes. For example, the Name Guide requires covered entities to label *mustela vison* as "mink."<sup>15</sup>

The Commission first published the Name Guide in 1952. Under the Fur Act, the Commission can amend the Name Guide only "with the assistance and cooperation of the Department of Agriculture and the Department of Interior" and "after holding public hearings."<sup>16</sup> Prior to this rulemaking, the Commission amended the Name Guide twice, most recently in 1967.<sup>17</sup>

#### C. TFLA

In 2010, Congress enacted TFLA, which revoked one Fur Act exemption and replaced it with another. Specifically, TFLA deleted a Fur Act provision that authorized the Commission to exempt fur products of relatively low value from labeling requirements.<sup>18</sup> Under that authority, the Fur Rules exempted products with a fur component valued at less than \$150.<sup>19</sup> TFLA replaced this *de minimis* exemption with a new, more limited exemption for furs sold directly by trappers and hunters to end-use customers in certain face-to-face transactions ("hunter/trapper exemption"). The new exemption provides:

No provision of [the Fur Act] shall apply to a fur product (1) the fur of which was obtained from an animal through trapping or hunting; and (2) when sold in a face to face transaction at a place such as a residence, craft fair, or other location used on a temporary or short term basis, by the person who trapped or hunted the animal, where the revenue from the sale of apparel or fur products is not the primary source of income of such person.<sup>20</sup>

In addition, TFLA required the Commission to initiate a review of the Name Guide.<sup>21</sup>

#### D. Procedural Background

In March 2011, as part of its regulatory review program,<sup>22</sup> the Commission sought comment on the Fur Rules. As directed by TFLA, the Commission also sought comment on the Name Guide.<sup>23</sup> Several commenters advocated updating the Name Guide. In addition, some advocated allowing more labeling flexibility.

The only contentious issue was whether the Name Guide should continue to require the name "Asiatic Raccoon" to describe the species *nyctereutes procyonoides*. The animal *nyctereutes procyonoides* is a distinct species that is part of the Canidae family (which includes dogs, foxes, coyotes, and wolves), and which has raccoon-like markings. In 1961, the Commission applied the statutory standard in the Fur Act and determined that "Asiatic Raccoon" was the name that would "afford proper identification" for fur products derived from *nyctereutes procyonoides*.<sup>24</sup>

The Humane Society of the United States ("HSUS") strongly urged the Commission to change the name to "Raccoon Dog." Others argued that the Commission should retain "Asiatic Raccoon." Some commenters also requested that the Commission allow "Finnraccoon" as an alternative name for *nyctereutes procyonoides* fur from Finland.

After receiving comments, the Commission held a public hearing on the Guide on December 6, 2011, as required by the Fur Act. The hearing was in roundtable format with an opportunity for audience participation.<sup>25</sup> Four commenters participated in the roundtable: HSUS; the Fur Information Council of America; the National Retail Federation; and Finnish Fur Sales. In addition, the hearing included representatives from the United States Department of Agriculture, the United States Geological Survey, and the Fish and Wildlife Service ("FWS").

On September 17, 2012, the Commission published the first of two Notices of Proposed Rulemaking

<sup>3</sup> 15 U.S.C. 69b(2); 16 CFR 301.2(a).

<sup>4</sup> 16 CFR 301.40.

<sup>5</sup> 16 CFR 301.27.

<sup>6</sup> 16 CFR 301.30.

<sup>7</sup> 16 CFR 301.29(a). By contrast, the Commission's regulations requiring labels for textile products do not have such detailed labeling specifications.

<sup>8</sup> 15 U.S.C. 69h; 16 CFR 301.46, 301.47, 301.48, and 301.48a.

<sup>9</sup> 15 U.S.C. 69h(a)(1).

<sup>10</sup> 15 U.S.C. 69h(a)(2).

<sup>11</sup> 15 U.S.C. 69h(a).

<sup>12</sup> The policy statement is available at [www.ftc.gov/system/files/documents/public\\_statements/299821/guaranty\\_policy\\_statement.pdf](http://www.ftc.gov/system/files/documents/public_statements/299821/guaranty_policy_statement.pdf).

<sup>13</sup> 15 U.S.C. 69e(a).

<sup>14</sup> *Id.*

<sup>15</sup> 16 CFR 301.0.

<sup>16</sup> 15 U.S.C. 69e(b).

<sup>17</sup> 32 FR 6023 (Apr. 15, 1967).

<sup>18</sup> Public Law 111-313, section 2.

<sup>19</sup> 16 CFR 301.39(a).

<sup>20</sup> Public Law 111-313, at section 3.

<sup>21</sup> *Id.* at section 4.

<sup>22</sup> For further discussion of the program, see [www.ftc.gov/opa/2011/07/regreview.shtm](http://www.ftc.gov/opa/2011/07/regreview.shtm).

<sup>23</sup> 76 FR 13550.

<sup>24</sup> 26 FR 10446 (Nov. 4, 1961).

<sup>25</sup> Citations to the Hearing Transcript are "Tr. at [page], ln. [line number]." See <http://www.ftc.gov/sites/default/files/filings/initiatives/376/111206furtranscript.pdf>.

(“NPRM”).<sup>26</sup> This NPRM addressed three areas: The Name Guide, the mechanics of labeling, and incorporating TFLA’s provisions. As the NPRM explained, the Commission proposed amendments to update the Guide, but it did not find a basis for changing the name for *nyctereutes procyonoides* to “Raccoon Dog” or for allowing “Finnraccoon.” In addition, the proposed amendments provided more labeling flexibility by eliminating: (1) The requirement to disclose whether fur is from “sides” or “flanks”; (2) the font and label size requirements; (3) the requirement that items sold in pairs or groups be “firmly attached to each other” in order to use one label; (4) the requirement that only FTC information appear on the front of the label and appear in a certain order; and (5) the requirement that labels include an “item mark” designating a specific fur product. The proposed amendments also incorporated TFLA’s provisions by replacing the *de minimis* exemption with the hunter/trapper exemption.

On June 19, 2013, the Commission published a Supplemental Notice of Proposed Rulemaking (“Supplemental NPRM”) that proposed changes to the Rules’ guaranty provisions.<sup>27</sup> The proposed changes mirrored amendments the Commission proposed in May 2013 to its Rules and Regulations under the Textile Products Identification Act (“Textile Rules”). Specifically, the Supplemental NPRM clarified that guarantors can provide guaranties electronically, revised the continuing guaranty form to no longer require guarantors to swear under penalty of perjury, and required annual renewal of continuing guaranties. The Commission announced final amendments to the Textile Rules’ guaranty provisions on March 14, 2014. Those amendments are substantively the same as those announced in this document.

### III. Comments

The Commission received 28 comments (in addition to comments submitted in a mass mailing campaign) responding to the NPRM and seven comments responding to the Supplemental NPRM.<sup>28</sup> The

commenters remained divided on whether the Guide should require “Asiatic Raccoon” or “Raccoon Dog” as the name for *nyctereutes procyonoides*. In addition, some business groups, along with the government of Finland, renewed their request to allow “Finnraccoon” as an alternative name. Commenters generally supported the proposed labeling flexibility, criticized the annual renewal requirement for continuing guaranties, and suggested additional updates to the Name Guide.

#### A. “Asiatic Raccoon” vs. “Raccoon Dog.”

Several industry commenters supported the Commission’s proposal to retain the name “Asiatic Raccoon.” In contrast, HSUS, the New York City Bar Association, Congressman Jim Moran, and many individual commenters urged the Commission to require “Raccoon Dog” instead.

##### 1. Support for Retaining “Asiatic Raccoon”

Seven commenters supported retaining “Asiatic Raccoon.” They contended that consumers understand the term as identifying *nyctereutes procyonoides*, that “Asiatic Raccoon” most accurately describes the animal, and that “Raccoon Dog” would mislead consumers.

##### a. Consumer Understanding of “Asiatic Raccoon”

Commenters reported that consumers have learned through marketplace exposure that “Asiatic Raccoon” describes *nyctereutes procyonoides*. For example, BCI International Group, Inc. (“BCI”), a fur retailer that has sold *nyctereutes procyonoides* fur products, stated:

For decades, [*nyctereutes procyonoides*] product[s] ha[ve] been recognized by the common name, which appears in the Fur Products Name Guide, “Asiatic Raccoon.” The retail and consumer market continues to recognize that name.<sup>29</sup>

The Fur Information Council of America (“FICA”) agreed. It affirmed the NPRM’s observation that “because ‘Asiatic Raccoon’ is the name that consumers have used to identify the animal since 1961, consumers likely understand that term.”<sup>30</sup> In addition, FICA noted that “no evidence of consumer confusion around this term exists.”<sup>31</sup>

comments to the Supplemental NPRM are referred to as “[ ] comment to the Supplemental NPRM at [ ].”

<sup>29</sup> BCI comment at 1.

<sup>30</sup> FICA comment at 3 (quoting 77 FR at 57048).

<sup>31</sup> FICA comment at 3.

##### b. “Asiatic Raccoon” Accurately Describes the Animal

Commenters also argued that “Asiatic Raccoon” describes the animal more accurately than “Raccoon Dog.” FICA, citing FWS’s Name Guide Hearing comments, explained that “‘Asiatic Raccoon’ accurately describes an animal that originated in Asia and that has raccoon-like characteristics. Specifically, much like a raccoon, it has rings around its eyes and it climbs trees.”<sup>32</sup> FICA further explained,

Although the Asiatic Raccoon is part of the Canidae family, like many other animals (e.g., fox, wolves, coyotes), it is completely dissimilar from a domestic dog and should not be confused with a dog or referenced as a dog. . . . The fox and the wolf are also members of the Canidae family and they have never been identified as dogs.<sup>33</sup>

Saga Furs Oyj (“Saga”), a Finnish auction house that sells *nyctereutes procyonoides* pelts, agreed that the animal “differs significantly” from domestic dog.<sup>34</sup> For support, it pointed to statements from scientific experts at the Name Guide hearing confirming that the animal is native to Asia and should not be confused with domestic dog.<sup>35</sup>

##### c. Risk of Consumer Confusion

Finally, fur industry commenters asserted that requiring “Raccoon Dog” would mislead consumers about the animal’s relationship to domestic dogs. FICA, for example, reiterated its position in earlier comments that using “Raccoon Dog” to describe *nyctereutes procyonoides* would confuse consumers. Specifically, FICA reported that “many companies” have stopped selling the fur in response to a media campaign characterizing the animal as a “raccoon dog.”<sup>36</sup> Consistent with that view, BCI stated:

The Asiatic Raccoon product . . . has suffered a setback in the marketplace in recent years, as a result of the attempt to link the product in the media with the term “raccoon dog.” That term is deceptive and

<sup>32</sup> FICA comment at 3 (citation omitted).

<sup>33</sup> *Id.* In an earlier comment, FICA submitted a more detailed analysis of how the animal differs from domestic dog:

[*Nyctereutes procyonoides*] behavioral and anatomical characteristics are so unique that it qualifies the species for its own genus listing (*Nyctereutes*). . . . The Asiatic/Finnraccoon split from the “true dog” evolutionary line between seven and ten million years ago. The Asiatic Raccoon/Finnraccoon exhibits vastly different behaviors than the dog. For example, it hibernates, climbs trees, and it participates in social grooming. (Citations omitted.)

FICA comment in response to opening of Fur Rules Review, available at [www.ftc.gov/os/comments/furlabeling/](http://www.ftc.gov/os/comments/furlabeling/).

<sup>34</sup> Saga comment at 1.

<sup>35</sup> *Id.*

<sup>36</sup> FICA comment at 3.

<sup>26</sup> 77 FR 57043 (Sept. 17, 2012).

<sup>27</sup> 78 FR 36693 (Jun. 19, 2013).

<sup>28</sup> The NPRM comments are available at [www.ftc.gov/os/comments/furrulesreview/index.shtm](http://www.ftc.gov/os/comments/furrulesreview/index.shtm). The Supplemental NPRM comments are available at [www.ftc.gov/os/comments/furlabelingsupplementnprm/index.shtm](http://www.ftc.gov/os/comments/furlabelingsupplementnprm/index.shtm). The Commission also received 28,000 mass mail comments from individual HSUS members. Over 25,000 of those were identical. This document discusses those comments cumulatively. Comments to the NPRM are referred to as “[ ] comment at [ ]”;

has created immense consumer confusion. . . .<sup>37</sup>

Thus, both FICA and BCI predicted that if the Commission required “Raccoon Dog,” then “there would no longer be a market for Asiatic Raccoon fur, and garments with this type of fur would be eliminated.”<sup>38</sup>

## 2. Support for “Raccoon Dog”

HSUS, Congressman Jim Moran, and the Committee on Animal Law of the New York City Bar Association (“NYC Bar”) urged the Commission to reconsider its proposal. Thousands of individual commenters also submitted identical (or very similar) comments supporting HSUS’s position. These commenters argued that “Raccoon Dog” better describes the animal’s taxonomic classification, it is the only true English name for the animal, and “Asiatic Raccoon” is an inappropriate trade name that confuses consumers. NYC Bar made an additional argument that, apart from the merits, retaining “Asiatic Raccoon” would be contrary to the TFLA’s intent.

### a. “Raccoon Dog” Better Describes the Animal’s Taxonomic Classification

Commenters argued that *Nyctereutes procyonoides*’ taxonomic classification in the Canidae family supported requiring “Raccoon Dog.” HSUS emphasized “that the correct taxonomic identification of the species *Nyctereutes procyonoides* is within the Canidae (dog) family and not the Procyonidae (raccoon) family.”<sup>39</sup> HSUS also responded to the NPRM’s statement that the taxonomic classification should not control because *nyctereutes procyonoides* has characteristics similar to raccoons:

Such distinctions can be found between many species within the same taxonomic families—the distinctions noted *do not change the zoological characteristics that make raccoon dogs a member of the Canidae family*. Indeed, a kangaroo rat looks like a kangaroo, and while it has many of the same characteristics of so-called “true-rats” in the genus *Rattus* (e.g., cheek pouches for food storage) kangaroo rats also have several distinct characteristics from “true-rats” (e.g., their bi-pedal hopping gait that makes them appear kangaroo-like). But it would not be

appropriate to call the kangaroo rat a “small desert kangaroo[.]”<sup>40</sup>

Congressman Moran likewise noted that *nyctereutes procyonoides* is “from the Canidae family [and] is unrelated to the raccoon . . . , making the term ‘Asiatic Raccoon’ highly misleading.”<sup>41</sup> Similarly, the HSUS members comment states, “raccoon dogs are a member of the Canidae (dog) family and are NOT, as the name ‘Asiatic raccoon’ implies, members of the Procyonidae (raccoon) family.”<sup>42</sup>

NYC Bar also discussed the significance of the classification to determining the proper name. It argued that “[b]ecause *Nyctereutes procyonoides* [sic] are related to domestic dogs, and dogs are widely considered pets in the United States and raccoons are not, it follows that some consumers of fur products would have objections to wearing such fur even if the animals cannot wag their tails, are able to climb trees, and hibernate.”<sup>43</sup>

### b. “Raccoon Dog” Is the True English Name

In addition, commenters argued that “Raccoon Dog” is the true English name because it is most often used to describe the animal. As evidence, they documented uses of “Raccoon Dog” in various contexts. For example, HSUS and NYC Bar reported that American-English dictionaries list “Raccoon Dog” as the English word for *nyctereutes procyonoides*.<sup>44</sup> In addition, HSUS pointed out that federal agencies have referred to *nyctereutes procyonoides* as “Raccoon Dog” on at least four occasions.<sup>45</sup> NYC Bar similarly noted the name’s use in a federal regulation and in fifteen state and local laws.<sup>46</sup> HSUS and NYC Bar further noted that several scientific organizations use “raccoon dog” and that the two American zoos that display the animal call it “Raccoon Dog.”<sup>47</sup>

<sup>40</sup> *Id.* at 3 (emphasis in original).

<sup>41</sup> Congressman Moran comment at 1.

<sup>42</sup> HSUS Mass Mail comment (#00033 and #00034) (emphasis in original). See also Brett Bartleson comment (arguing that the taxonomic classification should control). In addition, two individual commenters expressed support for “Raccoon Dog” without explanation. See “Miller” and Kathy Wilkins comments.

<sup>43</sup> NYC Bar comment at 12.

<sup>44</sup> NYC Bar comment at 4; HSUS comment at 6.

<sup>45</sup> HSUS comment at 4. HSUS also reiterated its prior argument that the Commission should defer to the Integrated Taxonomic Information System (“ITIS”), a system administered by several federal agencies that lists *nyctereutes procyonoides*’ common name as “raccoon dog.” HSUS comment at 4–5.

<sup>46</sup> NYC Bar comment at 6.

<sup>47</sup> HSUS comment at 5–6; NYC Bar comment at 5. HSUS also noted that several international institutions and scientific organizations use “raccoon dog.” HSUS comment at 4–6.

HSUS and NYC Bar also submitted evidence of “Raccoon Dog” appearing in various popular media. For example, NYC Bar reported:

The *New York Times* uses the term “raccoon dog” in all articles that concern *Nyctereutes procyonoides* [sic] except one which quotes a Humane Society representative stating that “Asiatic raccoon” is the name the fur is sold under. The *Albany Times Union*, *New York Post*, and *New York Daily News* use the term “raccoon dog” exclusively in articles concerning *Nyctereutes procyonoides* [sic].<sup>48</sup>

Similarly, HSUS pointed to PBS and BBC programming referring to the animal as a “raccoon dog,”<sup>49</sup> and NYC Bar noted the term’s use in books and in children’s educational materials.<sup>50</sup>

Although no commenters submitted consumer perception evidence showing widespread recognition of “Raccoon Dog,” HSUS explained why the uses of the name discussed above is relevant:

[N]early everywhere a consumer would find information about the species *Nyctereutes procyonoides*, he or she would be presented with information under the true English name raccoon dog. This is important because information relevant to consumers’ purchase of fur products—such as the manner in which this species is raised and killed for purpose of fur production—would most likely be associated with the true English name of the species.<sup>51</sup>

In response to fur-industry comments that “Raccoon Dog” could mislead consumers, HSUS and NYC Bar argued that the Commission should ignore the impact of “Raccoon Dog” on fur sales. HSUS observed that “harm to industry sales has nothing to do with accuracy of product representation or consumer protection.”<sup>52</sup>

### c. “Asiatic Raccoon” Is Misleading

Commenters opposed to “Asiatic Raccoon” described it as misleading and improper. Congressman Moran, for example, characterized the term as “a misleading and inaccurate industry-coined name.”<sup>53</sup> NYC Bar also criticized “Asiatic Raccoon,” explaining:

The word “Asiatic” means “Asian.” *Nyctereutes procyonoides* [sic] is not a raccoon (*Procyon lotor* and *Procyon cancrivorus*).

<sup>48</sup> NYC Bar comment at 6 (citations omitted).

<sup>49</sup> HSUS comment at 6.

<sup>50</sup> NYC Bar comment at 7–8.

<sup>51</sup> HSUS comment at 6. See also NYC Bar comment at 12 (“As far as retail consumers are concerned, it is important that the name of the fur match the only name that they are exposed to in dictionaries, zoos, and newspapers, and the most commonly used name in other materials so they can make an informed choice about whether to purchase a product containing fur.”).

<sup>52</sup> HSUS comment at 9.

<sup>53</sup> Moran comment at 1.

<sup>37</sup> BCI comment at 1.

<sup>38</sup> FICA comment at 3; BCI comment at 2. Saga raised a related concern that requiring labels with “raccoon dog” could confuse customs officials and delay imported *nyctereutes procyonoides* products’ entry into the United States. Saga explained that confusing that species’ fur with domestic dog fur could have serious legal consequences because the latter is banned in the United States. Saga comment at 2.

<sup>39</sup> HSUS comment at 2.

Using the adjective “Asiatic” to modify the word “raccoon” creates a fictitious and non-existent type of raccoon.<sup>54</sup>

Individual commenter Brett Bartleson likewise described “Asiatic Raccoon” as “misleading” and asserted that industry uses the term to “disguise the live skinning and other mistreatment of raccoon dogs.”<sup>55</sup>

HSUS challenged the NPRM’s statement that the name is not deceptive because consumers have become familiar with it in the marketplace. Specifically, it asserted that the evidence cited by the Commission was insufficient to demonstrate consumer familiarity and that the record showed “sporadic at best” use of “Asiatic Raccoon.”<sup>56</sup> It also noted frequent mislabeling and false advertising of *nyctereutes procyonoides* fur, including some instances of marketers describing it as “raccoon dog.”<sup>57</sup> Finally, HSUS reiterated its comments at the Name Guide Hearing that “Asiatic Raccoon” is “used frequently, but no more frequently than we find it misused.”<sup>58</sup> Thus, HSUS concluded, the Commission’s determination that consumers are familiar with “Asiatic Raccoon” is an “unsupported assumption.”<sup>59</sup>

Finally, HSUS and NYC Bar opposed “Asiatic Raccoon” as inconsistent with the Fur Rules’ prohibitions on trade names and names that deceive consumers about the animal’s zoological origin. NYC Bar described “Asiatic Raccoon” as a fictitious name coined by the fur industry, and argued that it therefore violated the Fur Rules’ prohibition on trade names.<sup>60</sup> In addition, HSUS stated that the Commission’s proposal “ignores its obligation to require use of only those names that do not deceive as to an animal’s ‘zoological origin.’”<sup>61</sup>

#### d. “Asiatic Raccoon” Is Contrary to TFLA’s Intent

NYC Bar argued that, aside from the merits of “Asiatic Raccoon” compared to “Raccoon Dog,” the Commission should adopt the latter to effectuate Congressional intent. NYC Bar pointed

to a Congressional Research Service summary of the Senate version of the legislation, which was not enacted. The summary described the law as directing the Commission “to replace the term ‘Raccoon, Asiatic’ with ‘Dog, Raccoon.’”<sup>62</sup>

#### B. “Finnraccoon”

Commenters disagreed over whether to include “Finnraccoon” in the Name Guide. Six commenters supported it, while two opposed. Commenters favoring “Finnraccoon” asserted that the name would help consumers identify products raised under stricter European Union standards. For example, the Finnish Fur Breeders’ Association stated:

[“Finnraccoon”] has achieved global recognition in the international fur marketplace as a result of the extensive marketing efforts. . . . Those marketing efforts highlight the strict national and EU-level animal welfare standards that regulate the farming of the Finn-raccoon. . . . The FTC, by not permitting use of the name Finn-raccoon . . . , has caused consumers mistakenly to believe that the product originates in Asia, where animal welfare standards are not as high as those in Europe, including Finland.<sup>63</sup>

The Association further noted that allowing “Finnraccoon” would harmonize United States and European Union regulatory standards.<sup>64</sup>

Finland’s Ministries of Foreign Affairs and of Agriculture and Forestry submitted identical comments that provided additional detail on European fur standards:

The EU is party to the European Convention for the protection of animals kept for farming purposes. The Convention aims to protect animals against any unnecessary suffering or injury. Countries that have signed the Convention must comply with specified rules concerning farming premises, feed, animal health and the organization of inspections of installations.<sup>65</sup>

The Ministries asserted that without “Finnraccoon” retailers would not be able to distinguish *nyctereutes procyonoides* fur raised in Asia from that raised in Europe.<sup>66</sup>

Saga agreed that retailers needed “Finnraccoon” to signal superior European fur-raising standards. In response to the NPRM’s observation that the record lacked evidence that consumers understand “Finnraccoon,” Saga asserted that consumers

understand the term because “most of the high-end fur garments sold in the U.S. and containing the *nyctereutes procyonoides* [sic] species are made of furs produced in Finland and are exclusively marketed under the nomenclature Finn-raccoon.”<sup>67</sup> Saga further asserted that labels disclosing “Asiatic Raccoon” from Finland are confusing to consumers because they cannot evaluate the conditions under which the product was raised.<sup>68</sup> In addition, fur retailer BCI reported that “Finnraccoon” had “achieved name recognition comparable to” “Asiatic Raccoon.”<sup>69</sup>

HSUS and NYC Bar, by contrast, agreed with the Commission’s proposal not to allow “Finnraccoon.” HSUS, consistent with its position that *nyctereutes procyonoides* has only one true English name, argued that the Commission should not allow any names other than “Raccoon Dog.”<sup>70</sup> NYC Bar further contended that “Finnraccoon” is an improper trade name that consumers do not understand.<sup>71</sup> NYC Bar also observed that the Fur Rules require a specific country of origin disclosure that would cure any confusion about the animal’s origin.<sup>72</sup>

#### C. Labeling Flexibility

The NPRM proposed removing or amending several provisions to provide more labeling flexibility, while continuing to ensure effective disclosures. Specifically, the NPRM proposed: (1) No longer requiring disclosures that fur comes from “sides” or “flanks”; (2) eliminating specific label and font size requirements; (3) allowing items sold in pairs to have only one label, even if not physically attached; (4) no longer requiring a fur “item number” on labels and invoices; and (5) deleting unnecessary provisions. Commenters unanimously supported these proposals. In addition, three commenters urged the Commission to further relax the disclosure requirements.

#### 1. Support for the Commission’s Proposals

Industry commenters praised the proposed amendments for lowering compliance costs. The American Apparel and Footwear Association (“AAFA”), for example, lauded “the

<sup>67</sup> Saga comment at 2.

<sup>68</sup> *Id.* at 3.

<sup>69</sup> BCI comment at 2.

<sup>70</sup> HSUS comment at 2 (arguing that the Commission should adopt “Raccoon Dog” and allow no other names).

<sup>71</sup> NYC Bar comment at 9–10.

<sup>72</sup> *Id.* at 11.

<sup>54</sup> NYC Bar comment at 10.

<sup>55</sup> Brett Bartleson comment; *see also* Megan Stalker comment (“Consumers who wish to avoid buying raccoon dog fur, or companies that wish to avoid selling it, will be duped by this inaccurate and misleading industry-coined name”).

<sup>56</sup> *Id.* at 7.

<sup>57</sup> *Id.* at 8.

<sup>58</sup> *Id.* at 9 (emphasis in original).

<sup>59</sup> HSUS comment at 9 (emphasis in original).

<sup>60</sup> NYC Bar comment at 9. *See also* HSUS comment at 3–4 (discussing history of “Asiatic Raccoon” and characterizing it as an industry trade name).

<sup>61</sup> HSUS comment at 2.

<sup>62</sup> NYC Bar comment at 12.

<sup>63</sup> Finnish Fur Breeders’ Association comment at 1.

<sup>64</sup> *Id.* at 1.

<sup>65</sup> Finland Ministries of Foreign Affairs and of Agriculture and Forestry comments at 1.

<sup>66</sup> *Id.* at 1.

efforts by the FTC to alleviate” the “significant costs on manufacturers and importers—which are passed down to consumers. . . .”<sup>73</sup> National Retail Federation (“NRF”) asserted that “these sensible changes will facilitate compliance by retailers and consumer brand companies while providing effective disclosure information to consumers. . . .”<sup>74</sup>

Commenters supported the increased labeling flexibility provided by a number of the proposals. The removal of prescribed label and font sizes received the most support. FICA, for example, explained that “the [label] size prescribed by the current Rules is impractical for smaller items. . . . [and] the current requirements for the text of the label are overly burdensome and have forced companies to use multiple labels to comply with the FTC, state, and international fur regulations.”<sup>75</sup> FICA noted the amendments would allow “more practical labels on small items.”<sup>76</sup> In addition, NRF “strongly support[ed] . . . allowing a single label for products ‘marketed or handled in pairs or ensembles,’ such as shoes and gloves.”<sup>77</sup> FDRA and the United States Association of Importers of Textile and Apparel (“ITA”) also appreciated that the NPRM confirmed that labels need only be attached with sufficient durability to ensure delivery to the consumer.<sup>78</sup> Finally, AAFA supported the proposals to eliminate certain provisions, such as the requirement that retailers assign an item number or mark to fur products. AAFA agreed that those provisions are unnecessary and do not benefit consumers.<sup>79</sup>

## 2. Comments Favoring Elimination of Other Requirements

Three commenters supported additional amendments that would further reduce disclosure requirements. ITA and FDRA argued that the Commission should eliminate what they described as redundant country of origin disclosures. Specifically, they noted that both the Fur and Textile Rules require separate country of origin disclosures for textile products that

contain fur. Therefore, many garments that use fur trim disclose the same country of origin twice. FDRA and ITA, therefore, proposed eliminating the requirement for a fur origin disclosure when the fur originates from the same as the country as the textile product.<sup>80</sup>

In addition, individual commenter “Gremmo” suggested amending § 301.19(g) to no longer require branding and labeling of furs that are not pointed, bleached, dyed, tip-dyed or artificially colored as “natural.” Gremmo argued that the “natural” disclosure does not convey meaningful information to consumers.<sup>81</sup>

### D. Guaranties

The Supplemental NPRM proposed changes to the Fur Rules’ guaranty provisions to conform to those proposed in the Textile NPRM. The Commission did not propose a requirement, suggested by HSUS, that continuing guaranties designate the type of fur transferred from a guarantor.

In the comments, HSUS reiterated its support for this proposal. Fur-industry representatives supported most of the Supplemental NPRM proposals, but criticized the proposed annual renewal requirement.

#### 1. HSUS Proposal

In the NPRM, the Commission explained that it could not require continuing guaranties to specify a type of fur transferred because doing so would conflict with the Fur Act’s declaration that continuing guaranties apply “to *any fur product or fur* handled by a guarantor.”<sup>82</sup> In response, HSUS first asserted a policy argument. Specifically, it argued that the current continuing guaranty provisions are insufficient to ensure accountability. According to HSUS, current law does not allow the Commission “to discern from the guaranty form whether or not the error was due to the retailers’ actions or the vendor’s actions.”<sup>83</sup>

HSUS then addressed the Commission’s legal argument. Although it acknowledged that the Fur Act would not permit limiting continuing guaranties to specific products, it contended that the Commission could prescribe a guaranty form requiring the type of fur in all products transferred.<sup>84</sup> HSUS argued that the Fur Act necessarily provides such discretion because it “anticipates that not every guaranty will be sufficient.”<sup>85</sup>

## 2. Supplemental NPRM Proposals

The Supplemental NPRM proposed two additional changes. First, it proposed altering the guaranty provisions to clarify that guaranties can be electronic documents. Second, it proposed requiring that guarantors annually renew continuing guaranties. In addition, the Fur Rules would incorporate the Textile amendments’ alterations to the unified form for Textile, Fur, and Wool continuing guaranties so that guarantors would no longer sign under penalty of perjury.

Although commenters unanimously supported many of the proposed changes,<sup>86</sup> three commenters criticized requiring annual renewal of continuing guaranties. AAFA stated that annual renewal would impose unreasonable burdens:

We believe [compliance] costs will actually be extensive considering the time and effort needed to complete the task. One AAFA member company estimates spending 5–8 hours on each continuing guaranty it files. Most companies file dozens of continuing guaranties, with many filing hundreds.<sup>87</sup>

AAFA further explained that the burden for companies is not only filing the guaranty, but also submitting copies to other buyers and retailers.<sup>88</sup>

FICA agreed. It explained that “annual renewal . . . would increase compliance burdens throughout the supply chain with regard to administering the requirement and filing the documentation with the FTC.”<sup>89</sup> FICA further explained that requiring annual renewal would require retailers and vendors “to change their vendor agreements or terms and conditions language to provide for annual renewal, thereby increasing the administrative burdens and cost.”<sup>90</sup> FICA also noted that processing forms renewed annually would increase the FTC’s administrative burdens.<sup>91</sup>

NRF also opposed the proposal as overly burdensome. It reported that “[o]ne national retailer has estimated

<sup>86</sup> Specifically, FICA and NRF supported the amendments clarifying that entities can transmit guaranties electronically and eliminating the penalty of perjury language. Both commenters also praised the Commission’s recent enforcement policy on goods imported directly to retailers. FICA comment to Supplemental NPRM at 2; NRF comment to Supplemental NPRM at 2–3. Although supportive of the policy statement’s substance, NRF renewed its call for the Commission to codify that policy through rulemaking. As the Commission explained in the Supplemental NPRM, it cannot do so under the Fur Act, which provides for guaranties from only domestic entities.

<sup>87</sup> AAFA comment to Supplemental NPRM at 2.

<sup>88</sup> *Id.* at 1.

<sup>89</sup> FICA comment to Supplemental NPRM at 2.

<sup>90</sup> *Id.* at 2.

<sup>91</sup> *Id.* at 2.

<sup>73</sup> AAFA comment at 2.

<sup>74</sup> NRF comment at 1–2.

<sup>75</sup> FICA comment at 3.

<sup>76</sup> *Id.* at 3. See also United States Association of Importers of Textile and Apparel comment at 1; NRF comment at 1; AAFA comment at 2; Footwear Distributors and Retailers of America comment at 2.

<sup>77</sup> NRF comment at 1. See also AAFA comment at 2.

<sup>78</sup> FDRA comment at 2; ITA comment at 1. FDRA also asked a question about obtaining Registered Identification Numbers. Commission staff can address those inquiries on a case-by-case basis.

<sup>79</sup> AAFA comment at 3.

<sup>80</sup> FDRA comment at 1; ITA comment at 1.

<sup>81</sup> Gremmo comment.

<sup>82</sup> 15 U.S.C. 69h(a)(2) (emphasis added).

<sup>83</sup> HSUS comment at 11.

<sup>84</sup> *Id.* at 12.

<sup>85</sup> *Id.* at 12.

that . . . the annual renewal requirement would cost around \$60,000 per year. . . .”<sup>92</sup>

#### E. Further Name Guide Updates and Miscellaneous Issues

Commenters also urged additional Name Guide updates and addressed miscellaneous issues. Dr. Alfred Gardner of the United States Geological Survey suggested six additional updates to the Guide.<sup>93</sup> HSUS objected to the removal of two common names, and noted that the Guide misspells the name “suslik.”<sup>94</sup>

In addition, several commenters submitted miscellaneous comments. An anonymous commenter supported the Commission’s decision not to propose a labeling exemption for small items or to expand the Rules’ scope to faux fur products.<sup>95</sup> However, the National Humane Education Society asked the Commission to require language “that allows consumers to know whether a fur is real or fake.”<sup>96</sup> Finally, many individuals submitted comments generally supporting the Fur Rules’ labeling requirements because they benefit consumers.<sup>97</sup>

#### IV. Analysis

The Commission announces final amendments that mostly adopt those proposed in the NPRM and the Supplemental NPRM. These amendments update the Name Guide while retaining “Asiatic Raccoon” as *nyctereutes procyonoides*’ only name in the Guide, provide more labeling flexibility, conform the Rules to TFLA, eliminate unnecessary provisions, and revise the guaranty provisions to conform to those governing textile products. The Commission does not adopt its proposal to require annual renewal of continuing guaranties.

##### A. Name Guide

This section first discusses why the Commission is retaining the name “Asiatic Raccoon.” It then responds to

<sup>92</sup> NRF comment to Supplemental NPRM at 2 (citation omitted).

<sup>93</sup> Gardner comment.

<sup>94</sup> HSUS comment at 10–11. Relatedly, AAFA urged the Commission to update the Guide more frequently to ensure entries remain updated, ideally on an annual basis. AAFA comment at 2.

<sup>95</sup> “Jane Doe” comment at 2–4.

<sup>96</sup> National Humane Education Society comment to Supplemental NPRM.

<sup>97</sup> See Brett Corless comment; Mass Mail Campaign comments to Supplemental NPRM; Karen Rome comment to Supplemental NPRM. In addition, several individuals submitted non-germane comments, most expressing an opinion on the use of fur. See comments of Yeasir Arafat, Ann Fennell, R. Holt, Sandy Howard, and Fletcher Smith; comment of Morgan Mckenzie to Supplemental NPRM.

the arguments that “Asiatic Raccoon” is inappropriate. Next, it explains why it will not add “Finnraccoon” to the Name Guide. Finally, it discusses proposed amendments to update the Name Guide.

##### 1. The Commission Retains “Asiatic Raccoon”

The Fur Act directs the Commission to use, in its Name Guide, “the true English names for the animals in question, or in the absence of a true English name for an animal, the name by which such animal can be properly identified in the United States.” 15 U.S.C. 69e. The threshold question is whether a given animal has at least one “true English name[ ]”. Only if the answer is negative does the Commission choose an alternative “name by which such animal can be properly identified in the United States.”

Significantly, a given animal can have more than one “true English name.” For example, the species *puma concolor* goes by several alternative “true English names,” including Mountain Lion, Cougar, Puma, and Panther. Those terms are all commonly used synonyms, and no one of them occupies any special status as the *most* “true” English name for the animal in question. Certainly nothing in the statutory text reveals any congressional determination that, for each animal, there can be at most one “true English name[ ]” in common usage.<sup>98</sup> As the *puma concolor* example illustrates, that view would conflict with everyday speech, which is an additional reason to conclude that Congress did not intend this interpretation.

That said, Congress did intend for the Commission to ensure uniformity in fur labels and avoid consumer confusion by choosing, in general, one name that manufacturers must use to denote a given animal.<sup>99</sup> The Commission

<sup>98</sup> As noted, Congress directed the Commission, in the plural, to use “the true English names for the animals in question.” To be sure, Congress separately provided that “in the absence of a true English name for an animal,” the Commission should use “the name by which such animal can be properly identified in the United States.” (Emphasis added.) But the use of the singular in the term “a true English name” does not imply that, for any given animal, there can be only one such name in common usage. Instead, it merely addresses the possibility that there may not be *any* “true English name” for a given animal.

<sup>99</sup> See, e.g., 15 U.S.C. 69b(2)(A) (providing that a fur product is misbranded if the label does not show “the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur”); 15 U.S.C. 69e(c) (“If the name of the animal (as set forth in the Fur Products Name Guide) connotes a geographical origin or significance other than the true country or place of origin of such animal, the Commission may require whenever such name is used . . . such qualifying statements as it may deem necessary to prevent confusion or deception.”).

construes the Fur Act to provide broad discretion to choose among the “true English names” for an animal where there is more than one such name. Nothing in the Act limits how the Commission may exercise that discretion so long as it acts reasonably and ensures consistency with the broad purposes of the Fur Act. For example, nothing in the Act requires the Commission to base that choice solely on relative frequency of use, such as how often a given name has been used in books or Web sites. The Commission may instead consider a range of relevant factors, such as the need to avoid consumer confusion by ensuring consistency of usage over time within the marketplace for fur products.

In this case, the Commission finds that the animal in question—*nyctereutes procyonoides*—has two “true English names”: Asiatic Raccoon and Raccoon Dog. Although commenters disagree about which of these terms is more appropriate, there can be no serious dispute that “Asiatic Raccoon” has been in common use for many decades. See Section IV.A.1, *infra*. Indeed, for more than half a century, that term has appeared on countless product labels to denote the animal in question, and consumers of fur products now closely associate that name with this animal. For the reasons discussed below, the Commission exercises its discretion to maintain the use of *that* “true English name,” rather than the alternative such name (Raccoon Dog) on the product labels for the furs of this animal. Although opponents of the name “Asiatic Raccoon” argue that the name is confusing because the animal in question is “not a raccoon,” NY City Bar Comments at 1, it is equally true that the animal is not a “dog” as consumers understand that term. Indeed, the animal is no more closely related to domestic dogs than are coyotes and jackals.

The Commission’s conclusion would remain the same even if the Fur Act were construed to reflect a congressional assumption that there can be *at most one* “true English name[ ]” per animal. Under that alternative statutory construction, the Commission would conclude that, because there are two equally permissible names in common usage to describe the same animal, *neither* could qualify as the one “true” English name, any more than Cougar or Panther or Mountain Lion could qualify as the one “true” English name for *puma concolor*. In that event, the Commission would proceed to the second statutory step, choosing a “name by which such animal can be properly identified in the United States.” The



Commission would choose “Asiatic Raccoon” under that approach as well.

As discussed in the NPRM,<sup>100</sup> “Asiatic Raccoon” describes the animal in a way that consumers in the United States can recognize it. At the Name Guide Hearing, a FWS representative explained that the word “Asiatic” “gives you an idea where the animal originated naturally.”<sup>101</sup> Critically, the representative did not agree with HSUS that “Asiatic” is misleading. In fact, she described the term as “neutral.”<sup>102</sup> The term “Raccoon” is also appropriate. As detailed in the NPRM, *nyctereutes procyonoides* has a raccoon-like fur pattern around its eyes and “superficially resembles the raccoons \* \* \* that are native to the Americas.”<sup>103</sup> In addition, the animal exhibits behavioral characteristics, like tree climbing, that are raccoon-like. By contrast, the animal does not appear to exhibit characteristics that mimic domestic dogs, such as barking and tail-wagging.

Moreover, the record indicates that consumers of this fur have become familiar with the name “Asiatic Raccoon” through labels and marketing. Several commenters, including fur retailer BCI, report that labels and advertising have used “Asiatic Raccoon” for many years. Consistent with that evidence, FICA and Finnish Fur explained at the Name Guide hearing that products with *nyctereutes procyonoides* fur usually had labels with the name “Asiatic Raccoon,” even prior to the elimination of the *de minimis* exemption, thereby exposing consumers to the term.<sup>104</sup> NRF also noted that retailers have labeled fur products made of *nyctereutes procyonoides* with Asiatic Raccoon to the extent the products did not meet the *de minimis* exemption.<sup>105</sup>

Shopping searches conducted on Google Shopping further confirm this record evidence. For example, according to searches conducted on March 13, 2014, a shopper searching with the

terms “Asiatic Raccoon” and “Raccoon Dog” would find many more fur products using the term “Asiatic Raccoon.” In fact, the vast majority of hits on a Google Shopping search for “Raccoon Dog” yielded almost no fur products in the first page of results.

Finally, the proposed alternative, “Raccoon Dog,” has significant problems. The record indicates that the name could significantly mislead consumers about the animal’s relationship to domestic dog. Industry commenters unanimously agreed that the name “Raccoon Dog” would mislead consumers into thinking that animal is domestic dog.<sup>106</sup> HSUS and NYC Bar correctly argued that harm to fur sales is not a consideration in determining the name the Commission should list in the Guide. However, evidence that the name “Raccoon Dog” has or would mislead consumers is relevant to the Commission’s determination of whether such name would confuse consumers about the animal.

In fact, comments submitted by individual HSUS members demonstrate that potential confusion. Specifically, 188 HSUS member comments indicate a mistaken assumption that *nyctereutes procyonoides* is the same species as domestic dog.<sup>107</sup> For example, one commenter wrote, “Make no mistake. This is a DOG. A companion animal.”<sup>108</sup> Similarly, another asserted that the animals “are dogs, just like Fido and Spot.”<sup>109</sup> Another expressed concern that companies selling *nyctereutes procyonoides* were violating the prohibition against selling domestic dog and cat fur.<sup>110</sup>

Indeed, many individual commenters appeared to think that “Raccoon Dog” was a breed of domestic dog rather than a different species. For example, one commenter asked, “would you treat a Collie like this? How about Pomeranian, or a Beagle or a Poodle[?]”<sup>111</sup> Finally, several commenters referenced the relationship between domestic dogs and humans. For example, one asked that the Commission require “Raccoon Dog”

“so consumers will know that they are wearing man[']s best friend on their backs.”<sup>112</sup>

## 2. The Arguments Against “Asiatic Raccoon” Are Not Persuasive

Commenters favoring “Raccoon Dog” asserted that, notwithstanding the above, “Asiatic Raccoon” is inappropriate because it is technically inaccurate, deceptive, contrary to the Fur Rules, and inconsistent with TFLA’s intent. For the reasons discussed below, these arguments are not persuasive.

### a. Technical Accuracy

HSUS, NYC Bar, and the HSUS members asserted that “Asiatic Raccoon” was technically incorrect because the animal’s taxonomic classification is in the Canidae family. However, those commenters did not explain the relevance of taxonomic classification to the statutory requirements for names: Either the “true English name” or a name by which the animal can be identified in the United States.<sup>113</sup> In particular, they failed to show how the animal’s closer relationship with domestic dog than raccoon made “Raccoon Dog” a more helpful name in identifying the animal. Although NYC Bar speculated that some consumers would want to avoid fur more closely related to dogs than raccoons, it did not provide any supporting evidence. Considering that the animal is no more closely related to domestic dogs than are foxes, wolves, and coyotes, there is no reason to believe that a significant number of consumers would find its family classification meaningful. Indeed, the scientific experts who commented at the Name Guide Hearing disagreed that taxonomic schemes should determine the animal’s common name.<sup>114</sup>

### b. Deception

HSUS and NYC Bar argued the name “Asiatic Raccoon” is deceptive because consumers cannot be familiar with “Asiatic Raccoon” given the ubiquity of “Raccoon Dog.” These commenters, however, did not submit any consumer perception evidence demonstrating familiarity with “Raccoon Dog” or rebutting evidence of familiarity with “Asiatic Raccoon.” Rather, they cataloged the appearance of “Raccoon Dog” in authoritative sources and popular media.

This evidence, however, does not establish widespread consumer

<sup>100</sup> 77 FR at 57048.

<sup>101</sup> Tr. at 38, ln. 22–23. The Fur Act states that in issuing and revising the Name Guide, the FTC must do so with the “assistance and cooperation of the Department of Agriculture and the Department of the Interior.” 15 U.S.C. s 69e. The Fish and Wildlife Service is part of the Department of the Interior.

<sup>102</sup> Tr. at 39, ln. 6, 11–12. As described below, scientific representatives at the Name Guide Hearing also rejected the notion that taxonomic classifications determined the animal’s common name. Tr. at 13, ln. 6–9; Tr. at 13–14, ln. 21–6.

<sup>103</sup> HSUS ANPR Comment at 14 (attached letter of Dr. Lauren Nolfo-Clements).

<sup>104</sup> Tr. at 79, ln. 14–16 (“I would say the majority of the use of the trim is over the \$150 [threshold] and always has been over the exemption.”).

<sup>105</sup> Tr. at 81–82.

<sup>106</sup> See, e.g., BCI comment at 1 (“Asiatic Raccoon . . . has suffered a setback in the marketplace in recent years, as a result of the attempt to link the product in the media with the term ‘raccoon dog.’”).

<sup>107</sup> As noted above, HSUS members submitted thousands of form comments. 25,184 of those comments were identical. An additional 3,479 commenters submitted altered versions of the form comment.

<sup>108</sup> HSUS Mass Mail comment (#00034), file 0034–85303, Tiller Comment.

<sup>109</sup> HSUS Mass Mail comment (#00034), file 0034–85304, Arnott Comment.

<sup>110</sup> HSUS Mass Mail comment (#00034), file 0034–85303, Brunner Comment.

<sup>111</sup> HSUS Mass Mail comment (#00034), file 0034–85308, Justus Comment.

<sup>112</sup> HSUS Mass Mail comment (#00034), file 0034–85304, Abbott Comment.

<sup>113</sup> 15 U.S.C. 69e(a).

<sup>114</sup> Tr. at 13, ln. 6–9; Tr. at 13–14, ln. 21–6.



familiarity with “Raccoon Dog,” or unfamiliarity with “Asiatic Raccoon.” Scientific journals and organizations promote academic study and research; there is no reason to assume that consumers shopping for furs would consult them. The use of “Raccoon Dog” in dictionaries and popular media suggests that some consumers understand the term, but does not show whether a significant number of consumers do. Considering that “Asiatic Raccoon” has appeared on *nyctereutes procyonoides* marketing and labels for decades, the Commission cannot abandon that name absent evidence of widespread consumer familiarity with “Raccoon Dog.”

Critically, neither HSUS nor NYC Bar identified a single instance where use of the term “Asiatic Raccoon” deceived a consumer as to the product’s fur content. Considering that the Guide has required “Asiatic Raccoon” since 1961, if the term had confused or otherwise harmed consumers, evidence of such confusion should exist.<sup>115</sup> Perhaps anticipating this problem, HSUS and NYC Bar argued that consumers must know they are buying “Raccoon Dog” in order to conduct research about how fur producers treat the species. But as the Commission noted in the NPRM,<sup>116</sup> consumers researching information about “Asiatic Raccoon”—as opposed to shopping for fur products on Google Shopping—can easily perform a web search on Google and obtain information that identifies the animal by both the species name and “Raccoon Dog.” For example, a Google web search for information about “Asiatic Raccoon” performed on March 13, 2014, retrieved dozens of links related to *nyctereutes procyonoides*, with five of the first six links referring to both the Latin name of the species and the term “Raccoon Dog.”

<sup>115</sup> HSUS challenged the Commission’s conclusion that consumers have been exposed to “Asiatic Raccoon” in the marketplace. Specifically, it alleged that because retailers have frequently mislabeled *nyctereutes procyonoides* fur, there is no basis to infer consumer exposure. However, as discussed above, Name Guide Hearing comments indicate the name has been used frequently. HSUS’s comments at the hearing, while emphasizing the alleged frequent mislabeling, conceded that *nyctereutes procyonoides* has been often labeled as “Asiatic Raccoon.”

HSUS also stated that the NPRM misrepresented its views regarding consumer exposure to “Asiatic Raccoon.” HSUS comment at 9. However, the NPRM merely noted HSUS’s agreement that the term “Asiatic Raccoon” has appeared in the marketplace, even if the animal has been frequently mislabeled. HSUS’s most recent comments appear consistent with that position.

<sup>116</sup> 77 FR at 57048, fn. 112.

#### c. Contrary to the Fur Rules

HSUS and NYC Bar also assert “Asiatic Raccoon” violates the Fur Rules’ prohibition on trade names and deception. They point to § 301.11 and § 301.17’s prohibitions on trade names and statements that are deceptive as to the animals’ zoological origin. However, “Asiatic Raccoon” is not a trade name. Rather, it is the true English name prescribed in the Name Guide for over 50 years. Furthermore, as discussed above, the Commission disagrees that “Asiatic Raccoon” is deceptive.

#### d. Inconsistent With TFLA’s Intent

Notwithstanding the merits of “Asiatic Raccoon” versus “Raccoon Dog,” NYC Bar asserted that the Commission should adopt the latter to carry out TFLA’s intent as indicated in a Congressional Research Service Summary for S. 1076, an early draft of TFLA. That summary inaccurately described the bill as directing the FTC “to replace the term ‘Raccoon, Asiatic’ with ‘Raccoon, Dog.’”<sup>117</sup> In addition, that summary referred to a draft of the bill with significantly different language than TFLA. Specifically, that version would have directed the Commission to “initiate a rulemaking to revise the Fur Products Name Guide.”<sup>118</sup> TFLA, by contrast, merely directs the Commission to initiate “a review of the Fur Products Name Guide.”<sup>119</sup> Indeed, the summary of the later version of the bill notes that it directs the Commission to review the guide, without mentioning “Asiatic Raccoon” or “Raccoon Dog.” The fact that Congress considered language directing the Commission to revise the Guide and then rejected that language does not support NYC Bar’s position. Indeed, it supports the opposite interpretation.<sup>120</sup>

#### 3. The Commission Declines To Add “Finnraccoon.”

In the NPRM, the Commission declined to propose “Finnraccoon” as an alternate for *nyctereutes procyonoides*. Fur-industry commenters and Finnish Government Ministries

<sup>117</sup> NYC Bar comment at 3, citing Bill Summary S. 1076.

<sup>118</sup> Bill Text of S. 1076 as introduced, available at: <http://www.gpo.gov/fdsys/pkg/BILLS-111s1076is/pdf/BILLS-111s1076is.pdf> (emphasis added).

<sup>119</sup> Public Law 111–113, section 4 (emphasis added).

<sup>120</sup> *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442 (1987) (“Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.”) (quoting *Nachman Corp. v. PBGC*, 446 U.S. 359, 392–93 (1980) (Stewart, J., dissenting)).

urged the Commission to reconsider, arguing that “Finnraccoon” would help consumers identify *nyctereutes procyonoides* raised according to stricter European regulatory standards. As discussed above, the Fur Act requires Name Guide names to be the animal’s “true English name” or a name by which consumers can identify the animal in the United States. The record indicates that “Finnraccoon” satisfies neither criterion.

In the NPRM, the Commission observed that there is no evidence that consumers understand that “Finnraccoon” is *nyctereutes procyonoides*. In response, fur-industry commenters reported that marketers of *nyctereutes procyonoides* products from Finland had extensively advertised the product as “Finnraccoon” in the last few years. However, the comments did not detail the extent of such marketing and, more importantly, did not provide any consumer perception evidence showing that a significant number of consumers understand the term.<sup>121</sup>

The NPRM also raised practical concerns that the commenters did not address. Specifically, the commenters justify the alternate name on purportedly superior European fur-farming practices. However, these practices can change and, in any event, the Commission cannot verify them. This issue is critical because the record shows no physiological difference between *nyctereutes procyonoides* raised in Asia and those raised in Europe. Moreover, the country of origin disclosure will alert consumers that the animal was raised in Europe, thereby mitigating any confusion. Accordingly, the Commission will not add “Finnraccoon” to the Name Guide.

#### 4. Name Guide Updates

The NPRM proposed numerous Name Guide revisions to update references to species or correct typographical errors. No comments objected to these proposals. Therefore, the Commission will finalize them.<sup>122</sup>

HSUS and Dr. Gardner urged the Commission to make additional updates and correct errors. The final amendments incorporate four revisions to the scientific names that the

<sup>121</sup> Unlike “Asiatic Raccoon,” “Finnraccoon” does not have a long history in the marketplace.

<sup>122</sup> HSUS also renewed its request from its earlier comment for several additional changes to the required name on labels. As explained in the NPRM, the Commission does not make those changes because there is no evidence of consumer harm from the currently required names.

Commission has independently verified with FWS.<sup>123</sup>

## B. Labeling Amendments

The NPRM proposed several amendments to reduce the amount of required information and provide more labeling flexibility. Commenters supported all these amendments. Accordingly, the Commission now finalizes them as proposed.

### 1. Required Information

Currently, Section 301.20(a) requires disclosure of pointed, dyed, bleached, or artificially colored fur and fur consisting of, among other things, “sides” or “flanks.”<sup>124</sup> In light of the uncontroverted comments that the “sides” and “flanks” disclosures do not provide consumers with meaningful information, the Commission eliminates them.

### 2. Label Specifications

The Fur Rules include extensive requirements regarding the size, font, and mechanics of labeling. As discussed in the NPRM, the Commission understands from its experience enforcing the Textile Rules that it is sufficient to require that disclosures be “clearly legible, conspicuous, and readily accessible to the prospective purchaser.”<sup>125</sup> Accordingly, the Commission amends the Rules to provide more flexibility regarding label size, text, and use for items sold in pairs or groups.

#### a. Label Size Requirements

Section 301.27 currently requires that labels measure 1.75 inches by 2.75 inches.<sup>126</sup> The Commission agrees this size is impractical for smaller items, a consideration that carries greater significance now that TFLA has eliminated the *de minimis* exemptions. Furthermore, the Commission’s textile labeling enforcement experience demonstrates that specifying exact label dimensions is unnecessary, so long as the required disclosures are conspicuous. Therefore, the Commission eliminates the size requirement. Consistent with the Textile Rules,<sup>127</sup> the new § 301.27 will require labels to be “conspicuous and of such durability as to remain attached to the product throughout any distribution,

<sup>123</sup> Specifically, the Commission updates the Order classification for “antelope” and the species names for “jaguarondi,” “peschanik,” and “suslik.” Entries for “kolinsky” and “lynx” that were omitted from the NPRM have been restored in the final rule.

<sup>124</sup> 16 CFR 301.19; 301.20.

<sup>125</sup> 16 CFR 303.16(b).

<sup>126</sup> 16 CFR 301.27.

<sup>127</sup> 16 CFR 303.15(a).

sale or resale, and until sold and delivered to the ultimate consumer.”

#### b. Label Text Requirements

Section 301.29 requires label text to be 12-point or “pica” font size. It also prohibits non-FTC information on the front of the label, while § 301.30 prescribes a specific order for disclosures. As discussed in the NPRM, these requirements create substantial burdens, such as forcing marketers to use multiple labels to comply with FTC, state, and international fur regulations. Furthermore, the Commission finds that, based on its experience enforcing the Textile Rules, these requirements are unnecessary to disclose relevant information effectively. Accordingly, the Commission:

- Replaces § 301.29(a)’s 12-point or “pica” type font-size requirement with a requirement to disclose information “in such a manner as to be clearly legible, conspicuous, and readily accessible to the prospective purchaser”;
- removes § 301.29(a)’s limits on information appearing on the front of the label, thereby allowing entities to include true and non-deceptive information on either side; and
- deletes § 301.30, which specifies a particular order for FTC disclosures.

#### c. Labels for Items Sold in Pairs or Groups

Section 301.31 requires that items “manufactured for use in pairs or groups” be “firmly attached to each other when marketed and delivered in the channels of trade and to the purchaser.”<sup>128</sup> In the NPRM, the Commission found that this requirement interferes with marketing smaller items like shoes and gloves, which are typically sold in pairs. Furthermore, there is no apparent benefit, and likely some inconvenience, to consumers from requiring actual attachment of items through the point of sale. Accordingly, the Commission eliminates the requirement and incorporates the Textile Rules’ provision allowing a single label for items “marketed or handled in pairs or ensembles,” regardless of whether they are attached to each other at the point-of-sale.<sup>129</sup> Thus, if retailers sell the items as pairs or ensembles and each item contains the same fur with the same country of origin, retailers may use a single label.

<sup>128</sup> 16 CFR 301.31(b).

<sup>129</sup> 16 CFR 303.29(b).

### 3. Additional Suggested Labeling Amendments Not Adopted

Three commenters supported additional amendments that would eliminate supposedly redundant “fur origin” disclosures, and the requirement to label certain furs as “natural.” The Commission declines to adopt either amendment.

Commenters FDRA and ITA argued that requiring “fur origin” disclosures on products, like textiles, that already have a country of origin label is redundant. The Commission does not agree. The required country of origin disclosure for textiles relates to the location the product was manufactured. Thus, textile disclosures typically read “Made in [ ].”<sup>130</sup> Because fur skins are not manufactured, a “Made in” disclosure applying to both the textile and fur portion of a product would likely confuse consumers. Therefore, the Commission will continue to require that fur labels disclose “Fur Origin: [country].”

Individual commenter “Gremmo” suggested eliminating § 301.19(g)’s requirement to brand and label certain furs as “natural.” Although the comment asserted that the “natural” disclosure does not convey meaningful information to consumers, it did not submit any supporting evidence. Moreover, no industry commenter reported that the requirement imposed a significant burden. Thus, there is no basis to remove that requirement.

#### C. Amendments Required by TFLA

TFLA’s amendments to the Fur Act require conforming changes to the Fur Rules. Accordingly, the Commission replaces the *de minimis* exemption (§ 301.39), as well as all related provisions,<sup>131</sup> with TFLA’s hunter/trapper exemption.

#### D. Amendments Eliminating Unnecessary Provisions

The NPRM proposed eliminating unnecessary provisions to simplify the Rules. No commenter objected. Therefore, the Commission deletes three sections. First, it deletes § 301.19(l)(1) through (7). These subsections provide

<sup>130</sup> See 16 CFR 303.33(a).

<sup>131</sup> Because TFLA eliminated the *de minimis* exemption, it also eliminated the provision that excepted dog and cat fur from that exemption (*i.e.*, a savings clause to require labeling of all dog and cat fur). Accordingly, the Commission deletes the definitions of “cat fur,” “dog fur,” and “dog or cat fur products,” as well as the cat and dog fur exceptions in § 301.39(a), because those terms are used only in the *de minimis* exemption provision. In addition, the Commission adopts several non-substantive amendments to ensure that references to other provisions and the Act are accurate and to correct typographical errors.

a suggested, but not required, method for determining whether a fur has been treated with iron or copper and, therefore, requires a “color altered” or “color added” disclosure. The suggestion is unnecessary because § 301.19 requires that an entity coloring furs must disclose the treatment on an invoice.<sup>132</sup>

Second, the Commission deletes § 301.28, which provides further guidance on attaching labels. Because the new § 301.27 clarifies the method for attaching labels, § 301.28 is now redundant.

Third, § 301.40 requires entities to assign an “item number or mark” to furs and to disclose it on invoices and labels.<sup>133</sup> In the Commission’s experience, it does not need this information to enforce the Fur Act and Rules. Furthermore, it does not provide any meaningful information to consumers. Therefore, the Commission eliminates this provision and the internal references to it.

#### E. Amendments to Guaranty Provisions

The Supplemental NPRM proposed several amendments to conform the Fur Rules’ guaranty provisions to those proposed in the Textile NPRM. These amendments would ensure that the Rules facilitate the electronic transmittal and submission of guaranties, and require annual renewal of continuing guaranties. Commenters supported the changes to facilitate electronic guaranties, but opposed annual renewal. In addition, HSUS renewed its request that continuing guaranties specify fur type. In light of the comments, the Commission adopts the provisions facilitating electronic guaranties, but not the annual renewal requirement or HSUS’s suggested amendment.

##### 1. Electronic Guaranties

To clarify that the Fur Rules do not prohibit electronically transmitted guaranties and conform the fur guaranty provisions to those governing textiles, the Commission adopts four amendments. First, it changes the term “invoice” in § 301.47 and the phrase “invoice or other paper” in § 301.48(b) to “invoice or other document.” These amendments are consistent with the fact that “invoice” includes documents that are electronically stored or transmitted.

Second, the Commission amends § 301.47 to include, as the Textile Rules currently do, a statement that the guarantor’s printed name and address will satisfy the signature requirement for separate guaranties. Specifically, the

Commission adds language to § 301.47 providing that a printed name and address will suffice to meet the signature and address requirements. This additional language will make clear that entities can sign guaranties electronically, consistent with the Electronic Signatures in Global and National Commerce Act.<sup>134</sup>

Third, the Commission deletes text in § 301.47 requiring separate guaranties to show “the date of shipment of the merchandise.” This change will further conform to the textile guaranty provisions.

Finally, the Commission adopts the definition of “invoice” and “invoice or other document” proposed in the Textile NPRM. This definition clarifies that “invoices,” which guarantors often use to transmit separate guaranties, include documents transmitted and stored electronically.

##### 2. Annual Renewal of Continuing Guaranties

As discussed above, commenters unanimously opposed requiring annual renewal of continuing guaranties. Significantly, commenters on the Textile NPRM likewise unanimously opposed the requirement as unreasonably burdensome, and noted that the Commission lacked a basis to find that annual renewal would increase reliability.<sup>135</sup>

Thus, the record lacks evidence demonstrating that the proposal would increase the reliability of continuing guaranties. Accordingly, the Commission has decided not to adopt this proposed amendment in the Fur and in the Textile Rules.

Nonetheless, the Commission continues to have concerns that continuing guaranties’ reliability may degrade over time. If the Commission obtains evidence that continuing guaranties have become less reliable after the guaranty amendments take effect, it will revisit this issue.

##### 3. Requiring Continuing Guaranties To Designate Fur Type

HSUS urged the Commission to require that continuing guaranties designate the specific animal that produced the fur for all products transferred. In practice, this would limit continuing guaranties’ coverage to only certain furs a guarantor transferred.

The Commission declines to adopt HSUS’s proposal because it disagrees with HSUS’s reading of the Fur Act.

<sup>134</sup> 15 U.S.C. 7001, *et seq.*

<sup>135</sup> See discussion in the Commission’s announcement of final amendments to the Textile Rules at 79 FR 18766, 18768 (Apr. 4, 2014).

HSUS asserted that the Fur Act allows limiting continuing guaranties to certain products because Section 10(a)(2) of the Act states that continuing guaranties shall be “in such form as the Commission by rules and regulations may prescribe.”<sup>136</sup> The language cited by HSUS is preceded by a statement that continuing guaranties will apply “to any fur product or fur handled by a guarantor.”<sup>137</sup> Thus, the Fur Act does not limit “any fur product or fur” to a specific type of fur. Although the Act gives the Commission discretion in prescribing the guaranty form, the Commission cannot require a form that would override clear statutory language. As the Commission stated in the NPRM, the Act provides for continuing guaranties that cover all fur products handled by the guarantor, regardless of the type of fur.

##### F. Applicability to Faux Fur Products

Commenter National Humane Education Society appeared to request that the Commission require all real and faux fur products to have labels indicating whether the fur is real. This would require applying the Fur Rules to items without fur. As the Commission stated in the NPRM, it cannot expand the Rules’ coverage to include faux fur because those rules are authorized by the Fur Act, which applies only to “furs” or “fur products,” defined as “animal skin . . . with hair, fleece, or fur fibers attached thereto” and products made of “fur or used fur,” respectively.<sup>138</sup>

##### V. Paperwork Reduction Act

The final amendments do not constitute a “collection of information” under the Paperwork Reduction Act (44 U.S.C. 3501–3521). The labeling amendments provide greater flexibility and, as such, potentially reduce disclosure burdens. The changes to the Name Guide simply alter the required, but Government-supplied, information on some labels.<sup>139</sup> Deleting the *de minimis* exemption will increase burden for some entities to the extent they will have to make disclosures regarding previously exempt products, but this has already been accounted for in the Commission’s most recently approved

<sup>136</sup> 15 U.S.C. 69h(a)(2).

<sup>137</sup> *Id.* (emphasis added).

<sup>138</sup> 15 U.S.C. 69(b) and (d).

<sup>139</sup> According to OMB, “[t]he public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not included” within the definition of a PRA “collection of information.” 5 CFR 1320.3(c)(2).

<sup>132</sup> 16 CFR 301.19(h).

<sup>133</sup> 16 CFR 301.40(a).

clearance request and burden estimates for the Fur Rule.<sup>140</sup>

**VI. Regulatory Flexibility Act**

The Regulatory Flexibility Act<sup>141</sup> requires an agency to provide a Regulatory Flexibility Analysis with a final rule unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.<sup>142</sup> As part of the Commission’s recent PRA clearance request, the Commission estimated that 1,230 retailers, 90 manufacturers, and 1,200 importers are subject to the Rules.<sup>143</sup> The Commission further estimated that these entities incur a total recordkeeping burden of 51,870 hours and a total disclosure burden of 116,228 hours.<sup>144</sup> The entities subject to these burdens will be classified as small businesses if they satisfy the Small Business Administration’s relevant size standards, as determined by the Small Business Size Standards component of the North American Industry Classification System (“NAICS”).<sup>145</sup> The relevant NAICS size standards, which are either minimum annual receipts or number of employees, are as follows:

| NAICS Industry title                      | Small business size standard |
|---|------------------------------|
| Fur-Bearing Animal and Rabbit Production. | \$750,000.                   |
| Fur and Leather Apparel Manufacturing.    | 500 employees.               |
| Men’s Clothing Stores .....               | \$10,000,000.                |
| Women’s Clothing Stores ..                | \$25,000,000.                |
| Department Stores .....                   | \$30,000,000.                |

The Commission is unable to determine how many of the above-listed entities qualify as small businesses. Neither the record in this proceeding nor in the recent PRA clearance proceeding contains information regarding the size of entities subject to the Fur Rules. No commenter addressed this subject. Moreover, the relevant NAICS categories include many entities that are not in the fur industry. Therefore, estimates of the percentage of small businesses in those categories would not necessarily reflect the percentage of small businesses subject to the Fur Rules in those categories.

Even absent this data, however, the Commission concludes that the amendments will not have a significant economic impact on small entities. As discussed above in Section V, the amendments do not impose any new costs. The greater flexibility should reduce disclosure burdens, and the

changes to the Name Guide simply alter the required information on some labels. Furthermore, businesses should not have to remove labels from existing fur products, which are mostly seasonal items, because they can continue to sell those products with old labels until the amendments’ effective date. Finally, the Commission is not adopting its proposal that continuing guaranty certifications be updated annually.

This document serves as notice to the Small Business Administration of the agency’s certification of no effect.

**List of Subjects in 16 CFR Part 301**

Furs, Labeling, Trade practices.

For the reasons discussed in the preamble, the Federal Trade Commission amends title 16, Chapter I, Subchapter C, of the Code of Federal Regulations, part 301, as follows:

**PART 301—RULES AND REGULATIONS UNDER FUR PRODUCTS LABELING ACT**

■ 1. The authority citation for part 301 continues to read:

**Authority:** 15 U.S.C. 69 *et seq.*

■ 2. Revise § 301.0 to read as follows:

**§ 301.0 Fur products name guide.**

| Name                | Order              | Family              | Genus-species   |
|---------------------|--------------------|---------------------|---|
| Alpaca .....        | Artiodactyla ..... | Camelidae .....     | Lama pacos.   |
| Antelope .....      | Artiodactyla ..... | Bovidae .....       | Hippotragus niger and Antilope cervicapra.                    |
| Badger .....        | Carnivora .....    | Mustelidae .....    | Taxida sp. and Meles sp.                                      |
| Bassarisk .....     | .....do .....      | Procyonidae .....   | Bassariscus astutus.  |
| Bear .....          | .....do .....      | Ursidae .....       | Ursus sp.   |
| Bear, Polar .....   | .....do .....      | .....do .....       | Ursus maritimus.  |
| Beaver .....        | Rodentia .....     | Castoridae .....    | Castor canadensis.  |
| Burunduk .....      | .....do .....      | Sciuridae .....     | Eutamias asiaticus.   |
| Calf .....          | Artiodactyla ..... | Bovidae .....       | Bos taurus.   |
| Cat, Caracal .....  | Carnivora .....    | Felidae .....       | Caracal caracal.  |
| Cat, Domestic ..... | .....do .....      | .....do .....       | Felis catus.  |
| Cat, Leopard .....  | .....do .....      | .....do .....       | Prionailurus bengalensis.                                     |
| Cat, Lynx .....     | .....do .....      | .....do .....       | Lynx rufus.   |
| Cat, Manul .....    | .....do .....      | .....do .....       | Felis manul.  |
| Cat, Margay .....   | .....do .....      | .....do .....       | Leopardus wiedii.   |
| Cat, Spotted .....  | .....do .....      | .....do .....       | Felis sp. (South America).                                    |
| Cat, Wild .....     | .....do .....      | .....do .....       | Felis catus and Felis lybica.                                 |
| Cheetah .....       | .....do .....      | .....do .....       | Acinonyx jubatus.   |
| Chinchilla .....    | Rodentia .....     | Chinchillidae ..... | Chinchilla chinchilla.  |
| Chipmunk .....      | .....do .....      | Sciuridae .....     | Tamias sp.  |
| Civet .....         | Carnivora .....    | Viverridae .....    | Viverra sp., Viverricula sp., Paradoxurus sp., and Paguma sp. |
| Desman .....        | Soricomorpha ..... | Talpidae .....      | Desmana moschata and Galemys pyrenaicus.                      |
| Dog .....           | Carnivora .....    | Canidae .....       | Canis familiaris.   |
| Ermine .....        | .....do .....      | Mustelidae .....    | Mustela erminea.  |
| Fisher .....        | .....do .....      | .....do .....       | Martes pennanti.  |
| Fitch .....         | .....do .....      | .....do .....       | Mustela putorius.   |
| Fox .....           | .....do .....      | Canidae .....       | Vulpes vulpes, Vulpes macrotis.                               |
| Fox, Blue .....     | .....do .....      | .....do .....       | Vulpes lagopus.   |
| Fox, Grey .....     | .....do .....      | .....do .....       | Urocyon cinereoargenteus and Urocyon littoralis.              |
| Fox, Kit .....      | .....do .....      | .....do .....       | Vulpes velox.   |

<sup>140</sup> OMB Control No. 3084–0099 (clearance granted April 3, 2012, through April 30, 2015).

<sup>141</sup> 5 U.S.C. 601–612

<sup>142</sup> See 5 U.S.C. 603–605.

<sup>143</sup> 77 FR 10744, 10745 (Feb. 23, 2012).

<sup>144</sup> *Id.*

<sup>145</sup> The standards are available at [www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

| Name                                  | Order           | Family          | Genus-species  |
|---------------------------------------|-----------------|-----------------|--|
| Fox, White                            | Carnivora       | Canidae         | Vulpes lagopus.  |
| Genet                                 | .....do         | Viverridae      | Genetta genetta.   |
| Goat                                  | Artiodactyla    | Bovidae         | Capra hircus.  |
| Guanaco, or its young, the Guanquito. | .....do         | Camelidae       | Lama guanicoe.   |
| Hamster                               | Rodentia        | Cricetidae      | Cricetus cricetus.   |
| Hare                                  | .....do         | Leporidae       | Lepus sp. and Lepus europaeus occidentalis.                                    |
| Jackal                                | Carnivora       | Canidae         | Canis aureus and Canis adustus.  |
| Jackal, Cape                          | .....do         | .....do         | Canis mesomelas.   |
| Jaguar                                | .....do         | Felidae         | Panthera onca.   |
| Jaguarundi                            | .....do         | .....do         | Herpailurus yagouaroundi.  |
| Kangaroo                              | Diprotodontia   | Macropodidae    | Marcopus sp.   |
| Kangaroo-rat                          | .....do         | Potoroidae      | Bettongia sp.  |
| Kid                                   | Artiodactyla    | Bovidae         | Capra hircus.  |
| Kinkajou                              | Carnivora       | Procyonidae     | Potos flavus.  |
| Koala                                 | Diprotodontia   | Phascolarctidae | Phascolarctos cinereus.  |
| Kolinsky                              | Carnivora       | Mustelidae      | Mustela sibirica.  |
| Lamb                                  | Artiodactyla    | Bovidae         | Ovis aries.  |
| Leopard                               | Carnivora       | Felidae         | Panthera pardus.   |
| Llama                                 | Artiodactyla    | Camelidae       | Lama glama.  |
| Lynx                                  | Carnivora       | Felidae         | Lynx canadensis and Lynx lynx.   |
| Marmot                                | Rodentia        | Sciuridae       | Marmota bobak.   |
| Marten, American                      | Carnivora       | Mustelidae      | Martes americana and Martes caurina.   |
| Marten, Baum                          | .....do         | .....do         | Martes martes.   |
| Marten, Japanese                      | .....do         | .....do         | Martes melampus.   |
| Marten, Stone                         | .....do         | .....do         | Martes foina.  |
| Mink                                  | .....do         | .....do         | Mustela vison and Mustela lutreola.  |
| Mole                                  | Soricomorpha    | Talpidae        | Talpa sp.  |
| Monkey                                | Primates        | Cercopithecidae | Colobus polykomos.   |
| Muskrat                               | Rodentia        | Muridae         | Ondatra zibethicus.  |
| Nutria                                | .....do         | Myocastoridae   | Myocastor coypus.  |
| Ocelot                                | Carnivora       | Felidae         | Leopardus pardalis   |
| Opossum                               | Didelphimorphia | Didelphidae     | Didelphis sp.  |
| Opossum, Australian                   | Diprotodontia   | Phalangeridae   | Trichosurus vulpecula.   |
| Opossum, Ringtail                     | .....do         | Pseudocheiridae | Pseudocheirus sp.  |
| Opossum, South American               | Didelphimorphia | Didelphidae     | Lutreolina crassicauda.  |
| Opossum, Water                        | .....do         | .....do         | Chironectes minimus.   |
| Otter                                 | Carnivora       | Mustelidae      | Lontra canadensis, Pteronura brasiliensis, and Lutra lutra.                    |
| Otter, Sea                            | .....do         | .....do         | Enhydra lutris.  |
| Pahmi                                 | .....do         | .....do         | Helictis moschata and Helictis personata.                                      |
| Panda                                 | Carnivora       | Ailuridae       | Ailurus fulgens.   |
| Peschanik                             | Rodentia        | Sciuridae       | Spermophilus fulvus.   |
| Pony                                  | Perissodactyla  | Equidae         | Equus caballus.  |
| Rabbit                                | Lagomorpha      | Leporidae       | Oryctolagus cuniculus.   |
| Raccoon                               | Carnivora       | Procyonidae     | Procyon lotor and Procyon cancrivorus.   |
| Raccoon, Asiatic                      | .....do         | Canidae         | Nyctereutes procyonoides.  |
| Raccoon, Mexican                      | .....do         | Procyonidae     | Nasua sp.  |
| Reindeer                              | Artiodactyla    | Cervidae        | Rangifer tarandus.   |
| Sable                                 | Carnivora       | Mustelidae      | Martes zibellina.  |
| Sable, American                       | .....do         | .....do         | Martes americana and Martes caurina.   |
| Seal, Fur                             | Carnivora       | Otariidae       | Callorhinus ursinus.   |
| Seal, Hair                            | .....do         | Phocidae        | Phoca sp.  |
| Seal, Roc                             | .....do         | Otariidae       | Otaria flavescens.   |
| Sheep                                 | Artiodactyla    | Bovidae         | Ovis aries.  |
| Skunk                                 | Carnivora       | Mephitidae      | Mephitis mephitis, Mephitis macroura, Conepatus semistriatus and Conepatus sp. |
| Skunk, Spotted                        | .....do         | .....do         | Spilogale sp.  |
| Squirrel                              | Rodentia        | Sciuridae       | Sciurus vulgaris.  |
| Squirrel, Flying                      | .....do         | .....do         | Eupetaurus cinereus, Pteromys volans and Petaurista leucogenys.                |
| Suslik                                | .....do         | .....do         | Spermophilus citellus, Spermophilus major rufescens and Spermophilus suslicus. |
| Vicuna                                | Artiodactyla    | Camelidae       | Vicugna vicugna.   |
| Viscacha                              | Rodentia        | Chinchillidae   | Lagidium sp.   |
| Wallaby                               | Diprotodontia   | Macropodidae    | Wallabia sp., Petrogale sp., and Thylogale sp.                                 |
| Weasel                                | Carnivora       | Mustelidae      | Mustela frenata.   |
| Weasel, Chinese                       | .....do         | .....do         | Mustela sibirica.  |
| Weasel, Japanese                      | .....do         | .....do         | Mustela itatsi (also classified as Mustela sibirica itatsi).                   |
| Weasel, Manchurian                    | Carnivora       | Mustelidae      | Mustela altaica and Mustela nivalis rixosa.                                    |
| Wolf                                  | .....do         | Canidae         | Canis lupus.   |
| Wolverine                             | .....do         | Mustelidae      | Gulo gulo.   |
| Wombat                                | Diprotodontia   | Vombatidae      | Vombatus sp.   |
| Woodchuck                             | Rodentia        | Sciuridae       | Marmota monax.   |

■ 3. Amend § 301.1 by removing paragraphs (a)(6), (7), and (8), revising paragraph (a)(4), and adding new paragraph (a)(6) to read as follows:

§ 301.1 Terms defined.

(a) \* \* \*

(4) The terms *Fur Products Name Guide* and *Name Guide* mean the register of names of hair, fleece, and fur-bearing animals issued and amended by the Commission pursuant to the provisions of section 7 of the act.

\* \* \* \* \*

(6) The terms *invoice* and *invoice or other document* mean an account, order, memorandum, list, or catalog, which is issued to a purchaser, consignee, bailee, correspondent, agent, or any other person, electronically, in writing, or in some other form capable of being read and preserved in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise, in connection with the marketing or handling of any fur or fur product transported or delivered to such person.

■ 4. Amend § 301.2 by revising paragraphs (b) and (c) to read as follows:

§ 301.2 General requirements.

\* \* \* \* \*

(b) Each and every fur, except those exempted under § 301.39, shall be invoiced in conformity with the requirements of the act and rules and regulations.

(c) Any advertising of fur products or furs, except those exempted under § 301.39, shall be in conformity with the requirements of the act and rules and regulations.

§ 301.19 [Amended]

■ 5. Amend § 301.19 by removing paragraphs (l)(1) through (7).

■ 6. Revise § 301.20(a) to read as follows:

§ 301.20 Fur products composed of pieces.

(a) Where fur products, or fur mats and plates, are composed in whole or in substantial part of paws, tails, bellies, gills, ears, throats, heads, scrap pieces, or waste fur, such fact shall be disclosed as a part of the required information in labeling, invoicing, and advertising. Where a fur product is made of the backs of skins, such fact may be set out in labels, invoices, and advertising.

\* \* \* \* \*

■ 7. Revise § 301.27 to read as follows:

§ 301.27 Labels and method of affixing.

At all times during the marketing of a fur product the required label shall be conspicuous and of such durability as to

remain attached to the product throughout any distribution, sale, or resale, and until sold and delivered to the ultimate consumer.

§ 301.28 [Removed and Reserved]

■ 8. Remove and reserve § 301.28.

■ 9. Revise § 301.29(a) to read as follows:

§ 301.29 Requirements in respect to disclosure on label.

(a) The required information shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the prospective purchaser, and all parts of the required information shall be set out in letters of equal size and conspicuousness. All of the required information with respect to the fur product shall be set out on one side of the label. The label may include any nonrequired information which is true and non-deceptive and which is not prohibited by the act and regulations, but in all cases the animal name used shall be that set out in the Name Guide.

\* \* \* \* \*

§ 301.30 [Removed and Reserved]

■ 10. Remove and reserve § 301.30.

■ 11. Revise § 301.31(b) to read as follows:

§ 301.31 Labeling of fur products consisting of two or more units.

\* \* \* \* \*

(b) In the case of fur products that are marketed or handled in pairs or ensembles, only one label is required if all units in the pair or group are of the same fur and have the same country of origin. The information set out on the label must be applicable to each unit and supply the information required under the act and rules and regulations.

■ 12. Amend § 301.35 by revising paragraph (b) to read as follows:

§ 301.35 Substitution of labels.

\* \* \* \* \*

(b) The original label may be used as a substitute label provided the name or registered number of the person making the substitution is inserted thereon without interfering with or obscuring in any manner other required information. In connection with such substitution the name or registered number as well as any record numbers appearing on the original label may be removed.

\* \* \* \* \*

■ 13. Revise § 301.39 to read as follows:

§ 301.39 Exempted fur products.

The requirements of the act and regulations in this part do not apply to fur products that consist of fur obtained from an animal through trapping or

hunting and that are sold in a face-to-face transaction at a place such as a residence, craft fair, or other location used on a temporary or short-term basis, by the person who trapped or hunted the animal, where the revenue from the sale of apparel or fur products is not the primary source of income of such person.

§ 301.40 [Removed and Reserved]

■ 14. Remove and reserve § 301.40.

■ 15. Amend § 301.41 by removing paragraph (a)(7) and revising paragraph (a)(4) to read as follows:

§ 301.41 Maintenance of records.

(a) \* \* \*

(4) That the fur product is composed in whole or in substantial part of paws, tails, bellies, gills, ears, throats, heads, scrap pieces, or waste fur, when such is the fact;

\* \* \* \* \*

■ 16. Revise § 301.47 to read as follows:

§ 301.47 Form of separate guaranty.

The following is a suggested form of separate guaranty under section 10 of the Act which may be used by a guarantor residing in the United States, on and as part of an invoice or other document in which the merchandise covered is listed and specified and which shows the date of such document and the signature and address of the guarantor:

We guarantee that the fur products or furs specified herein are not misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Fur Products Labeling Act and rules and regulations thereunder.

**Note to § 301.47.** The printed name and address on the invoice or other document will suffice to meet the signature and address requirements.

■ 17. Amend § 301.48 by revising the section heading and paragraph (b) to read as follows:

§ 301.48 Continuing guaranties.

\* \* \* \* \*

(b) Any person who has a continuing guaranty on file with the Commission may, during the effective dates of the guaranty, give notice of such fact by setting forth on the invoice or other document covering the marketing or handling of the product guaranteed the following: "Continuing guaranty under the Fur Products Labeling Act filed with the Federal Trade Commission."

\* \* \* \* \*

By direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. 2014-11047 Filed 5-27-14; 8:45 am]

BILLING CODE 6750-01-P

## PENSION BENEFIT GUARANTY CORPORATION

**29 CFR Parts 4041A, 4231, and 4281**

**RIN 1212-AB13**

### Multiemployer Plans; Valuation and Notice Requirements

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's (PBGC) multiemployer regulations to make the provision of information to PBGC and plan participants more efficient and effective and to reduce burden on plans and sponsors. The amendments reduce the number of actuarial valuations required for certain small terminated but not insolvent plans, shorten the advance notice filing requirements for mergers in situations that do not involve a compliance determination, and remove certain insolvency notice and update requirements. The amendments are a result of PBGC's regulatory review under Executive Order 13563 (Improving Regulation and Regulatory Review).

**DATES:** Effective June 27, 2014. See Applicability in **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:**

Catherine B. Klion ([klion.catherine@pbgc.gov](mailto:klion.catherine@pbgc.gov)), Assistant General Counsel for Regulatory Affairs, or Daniel Liebman ([liebman.daniel@pbgc.gov](mailto:liebman.daniel@pbgc.gov)), Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026; 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:**

#### Executive Summary—Purpose of the Regulatory Action

This final rule amends certain regulations governing PBGC's multiemployer program to make the provision of information to PBGC and plan participants more efficient and effective. This rule is needed to reduce burden on multiemployer plans and sponsors and to facilitate potentially

beneficial plan merger transactions. The rule reduces burden by allowing certain small terminated but not insolvent plans to provide valuations less frequently, easing reporting requirements for plan sponsors contemplating a merger transaction, and streamlining and removing certain notice requirements for insolvent plans.<sup>1</sup> This will reduce administrative costs and preserve plan assets that could otherwise have been used to fund plan benefits.

PBGC's legal authority for this regulatory action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA; section 4041A(f)(2), which gives PBGC authority to prescribe reporting requirements for terminated plans; section 4231(a), which gives PBGC authority to prescribe regulations setting the requirements for one or more multiemployer plans to merge; and section 4281(d), which directs PBGC to prescribe by regulation the notice requirements to plan participants and beneficiaries in the event of a benefit suspension.

#### Executive Summary—Major Provisions of the Regulatory Action

##### Annual Valuations

When a multiemployer plan terminates, the plan must perform an annual valuation of the plan's assets and benefits. This final rule allows valuations for plans that were terminated by mass withdrawal but are not insolvent and where the value of nonforfeitable benefits is \$25 million or less to be performed every three years instead of annually as required under the current regulations.

##### Filing Requirements for Mergers

Under PBGC's regulations, a merger or a transfer of assets and liabilities between multiemployer plans must satisfy certain requirements, including a requirement that plan sponsors of all plans involved in a merger or transfer must jointly file a notice with PBGC before the transaction. This final rule shortens the notice period from 120 days to 45 days where no compliance determination is requested.

##### Insolvency Notices and Updates

Terminated multiemployer plans that determine that they will be insolvent for a plan year must provide a series of notices and updates to notices to PBGC and participants and beneficiaries,

including a notice of insolvency. The final rule eliminates the requirement to provide annual updates to the notice of insolvency.

#### Background

PBGC administers two insurance programs for private-sector defined benefit plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA): A single-employer plan termination insurance program and a multiemployer plan insolvency insurance program.

A multiemployer plan is a collectively bargained pension arrangement involving several employers that are not within the same controlled group, usually in a common industry, such as construction, trucking, textiles, or coal mining. By contrast, a single-employer plan may be sponsored by either one employer (pursuant or not pursuant to a collective bargaining agreement) or by several unrelated employers (but not pursuant to a collective bargaining agreement).

ERISA section 4041A provides for two types of multiemployer plan terminations: Mass withdrawal and plan amendment. A mass withdrawal termination occurs when all employers withdraw or cease to be obligated to contribute to the plan. A plan amendment termination occurs when the plan adopts an amendment that provides that participants will receive no credit for service with any employer after a specified date, or an amendment that makes it no longer a covered plan. Unlike terminated single-employer plans, terminated multiemployer plans continue to pay all vested benefits out of existing plan assets and withdrawal liability payments. PBGC's guarantee of the benefits in a multiemployer plan—payable as financial assistance to the plan—starts only if and when the plan is unable to make payments at the statutorily guaranteed level.

This final rule reduces certain requirements for multiemployer plans that are terminated by mass withdrawal and mergers and transfers among multiemployer plans.

On January 18, 2011, the President issued Executive Order 13563 "Improving Regulation and Regulatory Review," to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. PBGC's Plan for Regulatory Review,<sup>2</sup> identifies several

<sup>1</sup> Under 29 CFR § 4041A.2, "insolvent" means that a plan is unable to pay benefits when due during the plan year.

<sup>2</sup> See <http://www.pbgc.gov/documents/plan-for-regulatory-review.pdf>.