

2. Representing that any costs which are based upon estimates are other than estimated costs and unless respondents can establish that such estimated costs are not less than those which may reasonably be expected to be incurred by such purchaser.

3. The operator or operators of a laundromat store or stores can realize gross receipts or net profits of any designated amounts when such amounts are in excess of those which respondents can establish as being the gross receipts or net profits such operator or operators may reasonably expect to achieve.

4. Equipment being sold for laundromat stores has a life expectancy of any period of time which is greater than respondents can establish to be the fact.

5. Respondents assist laundromat store owners in the operation of their business in any manner not in accordance with the facts.

6. Respondents make a survey or an investigation of neighborhoods for suitable locations for laundromat stores for their customers unless the nature and extent of such survey or investigation is clearly and expressly revealed and the respondents can establish that such survey or investigation actually has been made.

7. Any inexperienced person will be successful in operating a laundromat store.

8. Respondents will deliver their merchandise within a specific period of time, or on a specific date, unless in each instance such delivery is made as represented by respondents, or misrepresenting in any other manner the time within which respondents' merchandise will be delivered; or representing that respondents assist in the installation of laundromat equipment unless respondents in each instance furnish such assistance at the time of the delivery.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: February 19, 1964.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 64-2725; Filed, Mar. 20, 1964;
8:45 a.m.]

[Docket No. 8460 o.]

PART 13—PROHIBITED TRADE PRACTICES

Around-the-World Shoppers Club et al.

Subpart—Advertising falsely or misleadingly: § 13.75 *Free goods or services*; § 13.155 *Prices*; § 13.155-40 *Exaggerated as regular and customary*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Around-the-World Shoppers Club, et al., Newark, N.J., Docket 8460, Feb. 17, 1964]

No. 57—4

In the Matter of Around-The-World Shoppers Club, a Corporation Trading as Trans-World Shoppers Club, and David W. Margulies, Don Haas, Joe Vine, and I. G. Margulies, Individually and as Officers of Said Corporation

Order requiring operators of buying clubs—members of which received monthly, in return for their so-called membership fees, an article of merchandise from a foreign country—to cease representing falsely in promotional material mailed to prospective customers and subscribers, that excessive amounts were the usual retail prices of silver-plated coffee and tea services and cameras offered for \$10.00 as special bonuses to attract new members, and of a "400 day" clock given "free" for the same purpose.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents, Around-The-World Shoppers Club, a corporation trading under that or any other trade name or names, and David W. Margulies and Joe Vine, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of coffee and tea service sets, cameras, clocks or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said merchandise is being offered for sale at a price lower than the price charged by others for the same merchandise when the represented higher price appreciably exceeds the highest price at which substantial sales of the merchandise are being made in the trade area in which respondent is doing business.

2. Using the word "free," or any other word or words of similar import or meaning, in advertising or in other offers to the public, to designate or describe articles of merchandise, when a charge is made for such merchandise.

It is further ordered, That the initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents Don Haas and I. G. Margulies.

It is further ordered, That respondents Around-The-World Shoppers Club, a corporation, David W. Margulies and Joe Vine shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order set forth herein.

Issued: February 17, 1964.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 64-2726; Filed, Mar. 20, 1964;
8:45 a.m.]

[Docket No. C-716]

PART 13—PROHIBITED TRADE PRACTICES

Sav-Cote Chemical Laboratories, Inc., Et Al.

Subpart—Advertising falsely or misleadingly: § 13.15 *Business status, advantages, or connections*; § 13.15-215 *Organization and operation*; § 13.70 *Fictitious or misleading guarantees*; § 13.85 *Government approval, action, connection or standards*; § 13.85-75 *Use*; § 13.170 *Qualities or properties of product or service*; § 13.170-30 *Durability or permanence*; § 13.170-40 *Fire-extinguishing or fire-resistant*; § 13.170-96 *Waterproof, waterprooing, water-repellent*; § 13.265 *Tests and investigations*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Sav-Cote Chemical Laboratories, Inc., et al., Alexandria, Va., Docket C-716, Feb. 19, 1964]

In the Matter of Sav-Cote Chemical Laboratories, Inc., a Corporation, and William Moskowitz, Individually and as an Officer of Said Corporation

Consent order requiring an Alexandria, Va., mail order seller of its "Sav-Cote" products and other paints or coatings, to cease making—in direct-mail and newspaper advertisements and otherwise—numerous false statements concerning its business organization, the durability and the water and flame resistant and other protective qualities of "Sav-Cote", the use of the products by the armed forces, tests and approval by the Navy, and the guarantee to purchasers, among other deceptive claims.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

1. It is ordered, That respondents Sav-Cote Chemical Laboratories, Inc., a corporation and its officers, and William Moskowitz, individually, and as an officer of said corporation, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Sav-Cote plastic clear or Sav-Cote colors, or any other paint or coating, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Falsely representing, directly or by implication, that respondents' business is divided into departments or divisions.

2. Representing, directly or by implication, that any of such products defy aging or last indefinitely without aging or put an end to paint and surface coating problems; or misrepresenting, in any manner, the durability of any of such products.

3. Using the unqualified representation "Waterproofs" or "Stops rust & rot" or "Resists * * * flame" or "Doesn't Peel, * * * or Crack" or "forms a * * * leak-proof * * * skin" or "Goes over old paints" or any other word or words of similar unqualified import or meaning; or misrepresenting, in any manner, any

merits or characteristic of any of such products.

4. Using the word "Elastic" to describe any finish which is not capable of being readily stretched or expanded without essential alteration.

5. Using the word "Proven", or any other word or words of similar import or meaning in connection with any representation, unless respondents have scientific or empirical evidence available which establishes the truth of such representation.

6. Representing, directly or by implication, that any of such products has been tested by any person, company, organization or group which has not tested such product; or misrepresenting, in any manner, the results of any test conducted on any of such products.

7. Representing, directly or by implication, that any of such products has been approved by any person, company, organization or group which has not approved such products; or misrepresenting, in any manner, the approval given or granted to any of such products.

8. Representing, directly or by implication, that any person, company, organization or group has used any of such products unless such person, company, organization or group has usually, normally and regularly used such products.

II. It is further ordered, That respondents Sav-Cote Chemical Laboratories, Inc., a corporation and its officers, and William Moskowitz, individually, and as an officer of said corporation, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Sav-Cote plastic clear or Sav-Cote colors, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from: Representing, directly or by implication, that any product is guaranteed unless the nature and extent of the guarantee, the manner of performance and the identity of the guarantor are clearly and conspicuously disclosed.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: February 19, 1964.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 64-2727; Filed, Mar. 20, 1964;
8:46 a.m.]

[Docket No. 8534 o.]

PART 13—PROHIBITED TRADE PRACTICES

Product Testing Company, Inc.,
et al.

Subpart—Advertising falsely or misleadingly: § 13.15 *Business status, advantages, or connections*; § 13.15-195 *Nature*; § 13.70 *Fictitious or misleading guarantees*; § 13.105 *Individual's special selection or situation*; § 13.155 *Prices*;

§ 13.155-40 *Exaggerated as regular and customary*; §§ 13.155-93 *Special or test offers*; § 13.180 *Quantity*; § 13.180-35 *Offered*; § 13.230 *Size or weight*; § 13.255 *Surveys*; § 13.265 *Tests and investigations*. Subpart—Using misleading name—Vendor: § 13.2425 *Nature, in general*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45). [Cease and desist order, Product Testing Company, Inc., et al., Elizabeth, N.J., Docket 8534, Feb. 17 1964]

In the Matter of Product Testing Company, Inc., a Corporation, and Damar Products, Inc., a Corporation, Doing Business as Mrs. Dorothy Damar, Damar's, Emma and Jed's Country Store, The Consumer Research Bureau, and Product Testing Bureau, and David W. Margulies, Individually and as an Officer of Each of Said Corporations

Order requiring Elizabeth, N.J., mail order sellers of coffeemakers, dinnerware, luggage, toaster-broilers and other merchandise to cease making—in circulars, return mail pieces and other promotional material distributed to prospective customers—such false claims concerning the character of their business operations and the prices, quality, guarantee, performance and other characteristics of their merchandise, as in the order below more specifically set forth.

The order to cease and desist is as follows:

It is ordered, That respondents Product Testing Company, Inc., a corporation, and its officers, Damar Products, Inc., a corporation, and its officers, also doing business as Mrs. Dorothy Damar, Damar's, Emma and Jed's Country Store, The Consumer Research Bureau, and Product Testing Bureau, and David W. Margulies, individually, and as an officer of each of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of coffeemakers, dinnerware, luggage, toaster-broilers, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Testing" or the words "Consumer Research Bureau" or "Research Bureau" or any other word or words of similar import or meaning as a part of their respective corporate names or trade names unless such business is actually engaged in conducting bona fide, independent consumer tests, trial offerings or surveys to determine consumer reaction, preference or marketability of products.

2. Representing, directly or by implication, through the use of the words "This is a Consumer Test" or "Product Testing Service," or any other word or words of similar import or meaning that respondents are engaged in conducting bona fide, independent consumer tests, trial offerings or surveys to determine consumer reaction, preference or mar-

* New.

ketability of products; or misrepresenting, in any manner, the purpose or reason merchandise is offered for sale.

3. Representing, directly or by implication, that any offer to sell said merchandise is made to a limited number of preferred customers; or misrepresenting, in any manner, the class, group or number of persons to whom offers to sell merchandise are made.

4. Representing, directly or by implication, that any amount is the usual and customary price of merchandise in the trade area or areas where the representations are made when it is in excess of the generally prevailing price or prices at which said merchandise is sold in said trade area or areas.

5. Using the expressions "Retail," "Suggested Retail," or any other words or terms of similar import or meaning in connection with the retail prices of merchandise unless the prices so designated are the generally prevailing price or prices at which said merchandise is sold in the trade area or areas where the representations are made.

6. Representing, directly or by implication, that any saving from a trade area price is afforded in the purchase of merchandise unless the price at which it is offered is lower than the generally prevailing price or prices at which said merchandise is sold in the trade area or areas in which the representations are made.

7. Misrepresenting, in any manner, the savings available to purchasers of respondents' merchandise or the amount by which the price of merchandise has been reduced from the price at which it is customarily sold by respondents or their competitors in the usual course of business, in the trade area or areas where the representations are made.

8. Representing, directly or indirectly, that said coffeemaker has the capacity to make or brew any specified number of cups of coffee unless it will in fact brew the specified number of cups of coffee so that each cup may contain five ounces or more; or that any of said products has a capacity, content or size different from what it has in fact.

9. Representing, directly or by implication, that said products are guaranteed unless the nature, extent and duration of the guarantee, the manner in which the guarantor will perform thereunder and the name and address of the guarantor are clearly and conspicuously disclosed and respondents do in fact fulfill all of their requirements under the terms of said guarantee.

10. Using the expression "15 piece * * * heavy * * * aluminum * * * cookware" or any other words or terms of similar import or meaning to describe a cookware set which does not in fact contain the specified number of separate cooking utensils; or misrepresenting in any manner or by any means the number of pieces or constituent parts making up or comprising any of the aforesaid items or sets of merchandise.

11. Representing, directly or by implication, that said merchandise is purchased directly from the manufacturer or without the payment of profits to middlemen unless such is the fact.

By "Final Order", further order requiring report of compliance is as follows:

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: February 17, 1964.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 64-2739; Filed, Mar. 20, 1964;
8:47 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release 33-4677, etc.]

PART 200—ORGANIZATION; CON- DUCT AND ETHICS; AND INFORMA- TION AND REQUESTS

PART 201—RULES OF PRACTICE

PART 203—RULES RELATING TO INVESTIGATIONS

Miscellaneous Amendments

The Securities and Exchange Commission has adopted a new Part 203 of Title 17, CFR, consisting of rules relating to investigations conducted by the Commission, and has made other changes in existing rules, as it deemed appropriate. These rule changes are designed to clarify existing procedures, incorporate certain established Commission policies, and adopt certain recommendations of the Administrative Conference of the United States.¹ In the past, the incorporation of the Commission's rules dealing with investigations in the Commission rules of practice has sometimes caused confusion. Accordingly, the rules relating to investigations have been separated from the rules of practice.

Rule 1 (§ 203.1) of the new rules states that the rules relating to investigations are applicable only to investigations conducted by the Commission and not to adjudicative or rule making proceedings. Rule 2 (§ 203.2) provides that information or documents obtained by the Commission during the course of an investigation are non-public unless made a matter of public record. This embodies the principle formerly contained in paragraph (c) of Rule 26 of the Commission's rules of practice (17 CFR § 201.26 (c)) and the policy established by Rule 122 under the Securities Act of 1933 and Rule O-4 under the Securities Exchange Act of 1934 (§§ 230.122 and 240.0-4 of this chapter). Rule 2 is not intended to prohibit the Commission or its staff from making available to other persons information obtained in an investigation

when necessary to the furtherance of an investigation conducted by the Commission or another government agency. Rule 3 (§ 203.3) makes clear that Rule 2(e) of the Commission's rules of practice (§ 201.2(e) of this chapter) relating to denial or suspension of the right to practice or appear before the Commission, is applicable to Commission investigations.

Rule 4(a) (§ 203.4(a)) states that Rules 4 through 8 of the Rules Relating to Investigations (§§ 203.4 to 203.8) are applicable to all formal investigative proceedings, which are defined as proceedings held pursuant to a Commission order for investigation or examination. Rule 4(b) (§ 203.4(b)) provides that such proceedings may be held before the Commission, or one or more of its members or any officer designated by it for this purpose. Rule 5 (§ 203.5), embodies the established Commission policy that all formal investigative proceedings shall be non-public unless ordered by the Commission.

Rule 6 (§ 203.6) was derived from and replaces Rule 3(b) of the Commission's rules of practice (§ 201.3(b) of this chapter). This rule reflects existing Commission policy and provides that transcripts of formal investigative proceedings are to be recorded solely by the reporter or other person or means designated by the officer conducting the investigation. It, therefore, precludes a witness from having his own stenographer record his testimony in any investigation and his counsel from making a verbatim transcript of his testimony. Rule 6 also incorporates the former provisions of Rule 3(b) (§ 201.3(b)) which permitted a witness to obtain a copy of his transcript of testimony upon request to the Commission and payment of appropriate fees, unless the Commission denied such request for good cause. Rule 6 further provides that a witness may obtain a copy of his documentary evidence but, unlike § 201.3(b), does not provide for denial of such a request by the Commission. Finally, Rule 6 formalizes the present Commission practice of allowing a witness or his counsel to inspect a transcript of his testimony.

Rule 7(a) (§ 203.7(a)) reflects present Commission policy, and grants a witness the right to inspect a copy of a formal order of investigation but permits retention of such order only when the appropriate Division Director is satisfied that it will not impede the investigation and is consistent with protection of the privacy of persons involved in the investigation. Rule 7(b) (§ 203.7(b)) replaces Rule 3(c) of the Commission's rules of practice (§ 201.3(c) of this chapter) relating to the right to counsel of witnesses in Commission investigation. Pursuant to Recommendation 25² of the Administrative Conference, it extends to witnesses appearing voluntarily in a Commission investigation the same right to be accompanied, represented, and advised by counsel as guaranteed under Section 4 of the Administrative Procedure Act to witnesses appearing under subpoena. Rule 7(b) also defines

counsel as it is defined in Rule 2(b) of the Commission's rules of practice (§ 201.2(b) of this chapter). It further provides that sequestration of witnesses shall be applicable in investigations and unless the officer conducting the investigation in his discretion shall rule otherwise, no witness or his counsel may be present during the examination of any other witness. This rule therefore will preclude the same counsel from representing more than one witness in a formal investigative proceeding unless permitted in the discretion of the officer conducting the investigation.

Rule 7(c) (§ 203.7(c)) is in accordance with Recommendation 15³ of the Administrative Conference with respect to the meaning of the right of a witness to be accompanied, represented and advised by counsel. It provides that a witness may have an attorney present with him during any formal investigative proceeding for the purpose of advising the witness, questioning him briefly at the conclusion of the examination to clarify answers given by him and making summary notes during the examination for the use of the witness.

Rule 7(d) (§ 203.7(d)) is in accordance with Recommendation 15⁴ of the Administrative Conference. It provides that if the record in a public formal investigative proceeding contains any implication of wrongdoing by an individual, he shall have an opportunity to appear, cross-examine and produce rebuttal evidence in his defense to the extent consistent with administrative efficiency and avoidance of undue delay as determined by the officer conducting the investigation. Rule 7(e) (§ 203.7(e)) authorizes the officer conducting the investigation to report to the Commission any instance of dilatory, obstructionist or contumacious conduct by any witness or counsel or any other violations of these rules and provides that the Commission will take such further action as the circumstances warrant, including exclusion from further participation in the investigation and suspension or denial of the right to appear before the Commission pursuant to Rule 2(e) of the rules of practice (§ 201.2(e) of this chapter). Rule 8 (§ 203.8) makes clear that the service of the subpoena in formal investigative proceedings is to be governed by Rule 14(b) of the Commission's rules of practice (§ 201.14(b) of this chapter).

In connection with the adoption of these rules, Rule 1 of the rules of practice (17 CFR § 201.1) has been amended to make clear that the rules of practice (Part 201 of this chapter) do not apply to investigations, except where specifically made applicable by the rules relating to investigations (Part 203 of this chapter). In addition, Rule 3 and paragraph (c) of Rule 26 of the rules of practice (§§ 201.3 and 201.26(c)) have been rescinded, but that part of former § 201.26(c) relating to disclosure of confidential information by Commission officers and employees has been moved to a new § 200.40 of subpart B, Regulation

¹ See, Selected Reports of the Administrative Conference of the United States, S. Doc. No. 24, 88th Cong., 1st Sess. (1963).

² S. Doc. No. 24, supra at p. 223.

³ S. Doc. No. 24, supra at p. 223.

⁴ S. Doc. No. 24, supra at p. 223.

Concerning Conduct of Members and Employees and Former Members and Employees of the Commission, of Part 200.

The action of the Commission follows:

I. Subpart B of Part 200 is amended by the addition of a new § 200.40 at the end thereof, to read as follows:

§ 200.40 Disclosure of confidential information by officers and employees.

Any officer or employee who is served with a subpoena requiring the disclosure of non-public information or documents shall, unless the Commission authorizes the disclosure of such information, respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this rule. Any officer or employee who is served with such a subpoena shall promptly advise the Commission of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability in the public interest of making available such information or documents.

II. Section 201.1 is amended by the insertion of the following new sentence at the end thereof: "These rules do not apply to investigations, except where made specifically applicable by the Rules Relating to Investigations (Part 203 of this chapter)." As so amended, the section reads:

§ 201.1 Scope of rules of practice.

These rules of practice are generally applicable to proceedings before the Commission under the statutes which it administers, particularly those which involve a hearing or opportunity for hearing before the Commission or its duly designated officer. In connection with any particular matter, reference should also be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Commission thereunder, which special requirements are controlling. These rules do not apply to investigations, except where made specifically applicable by the Rules Relating to Investigations (Part 203 of this chapter).

§ 201.3 [Deleted]

III. Section 201.3 is rescinded.

§ 201.26 [Amended]

IV. Paragraph (c) of § 201.26 is rescinded.

V. A new Part 203 of this chapter is added to read as follows:

PART 203—RULES RELATING TO INVESTIGATIONS

SUBPART A—IN GENERAL

- Sec.
203.1 Application of the rules of this part.
203.2 Information obtained in investigations and examination.
203.3 Suspension and disbarment.

SUBPART B—FORMAL INVESTIGATIVE PROCEEDINGS

- 203.4 Applicability of §§ 203.4 through 203.8.
203.5 Non-public formal investigative proceedings.
203.6 Transcripts.

- Sec.
203.7 Rights of witnesses.
203.8 Service of subpoenas.

AUTHORITY: The provisions of this Part 203 issued under secs. 19(a), 23(a), 48 Stat. 85, 901, as amended, 15 U.S.C. 77s, 78w; sec. 20(a), 49 Stat. 833, 15 U.S.C. 79t; sec. 319, 53 Stat. 1173, 15 U.S.C. 77sss; sec. 38(a), 54 Stat. 841, 15 U.S.C. 80a-37; and sec. 211(a), 54 Stat. 855, as amended, 15 U.S.C. 80b-11.

Subpart A—In General

§ 203.1 Application of the rules of this part.

The rules of this part apply only to investigations conducted by the Commission. They do not apply to adjudicative or rule making proceedings.

§ 203.2 Information obtained in investigations and examinations.

Information or documents obtained by the Commission in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public.

§ 203.3 Suspension and disbarment.

The provisions of § 201.2(e) of this chapter (Rule 2(e) of the Commission's rules of practice) are hereby made specifically applicable to all investigations.

Subpart B—Formal Investigative Proceedings

§ 203.4 Applicability of §§ 203.4 through 203.8.

(a) Sections 203.4 through 203.8 shall be applicable to a witness who is sworn in a proceeding pursuant to a Commission order for investigation or examination, such proceeding being hereinafter referred to as a "formal investigative proceeding."

(b) Formal investigative proceedings may be held before the Commission, before one or more of its members, or before any officer designated by it for the purpose of taking testimony of witnesses and receiving other evidence. The term "officer conducting the investigation" shall mean any of the foregoing.

§ 203.5 Non-public formal investigative proceedings.

Unless otherwise ordered by the Commission, all formal investigative proceedings shall be non-public.

§ 203.6 Transcripts.

Transcripts, if any, of formal investigative proceedings, shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: *Provided, however,* That in a non-public formal investigative proceeding a person seeking a transcript of his testimony shall file a written request stating the reason he desires to procure such transcript, and the Commission may for good cause deny such request. In any event, any witness (or his counsel), upon proper identification, shall have the

right to inspect the official transcript of the witness' own testimony.

§ 203.7 Rights of witnesses.

(a) Any person who is compelled or requested to furnish documentary evidence or testimony at a formal investigative proceeding shall upon request be shown the Commission's order of investigation. Copies of formal orders of investigation shall not be furnished, for their retention, to such persons requesting the same except with the express approval of a Director of the Division or Divisions conducting or supervising the investigation. Such approval shall not be given unless the Division Director in his discretion is satisfied that there exist reasons consistent both with the protection of privacy of persons involved in the investigation and with the unimpeded conduct of the investigation.

(b) Any person compelled to appear, or who appears by request or permission of the Commission, in person at a formal investigative proceeding may be accompanied, represented and advised by counsel, as defined in § 201.2(b) of this chapter (Rule 2(b) of the Commission's rules of practice): *Provided, however,* That all witnesses shall be sequestered, and unless permitted in the discretion of the officer conducting the investigation no witness or the counsel accompanying any such witness shall be permitted to be present during the examination of any other witness called in such proceeding.

(c) The right to be accompanied, represented and advised by counsel shall mean the right of a person testifying to have an attorney present with him during any formal investigative proceeding and to have this attorney (1) advise such person before, during and after the conclusion of such examination, (2) question such person briefly at the conclusion of the examination to clarify any of the answers such person has given, and (3) make summary notes during such examination solely for the use of such person.

(d) Unless otherwise ordered by the Commission, in any public formal investigative proceeding, if the record shall contain implications of wrongdoing by any person, such person shall have the right to appear on the record; and in addition to the rights afforded other witnesses hereby, he shall have a reasonable opportunity of cross-examination and production of rebuttal testimony or documentary evidence. "Reasonable" shall mean permitting persons as full an opportunity to assert their position as may be granted consistent with administrative efficiency and with avoidance of undue delay. The determination of reasonableness in each instance shall be made in the discretion of the officer conducting the investigation.

(e) The officer conducting the investigation may report to the Commission any instances where any witness or counsel has been guilty of dilatory, obstructive or contumacious conduct during the course of an investigation or any other instance of violation of these rules. The Commission will thereupon take such further action as the circumstances may warrant, including suspen-

sion or disbarment of counsel from further appearance or practice before it, in accordance with § 201.2(e) of this chapter (Rule 2(e) of the Commission's rules of practice), or exclusion from further participation in the particular investigation.

§ 203.8 Service of subpoenas.

Service of subpoenas issued in formal investigative proceedings shall be effected in the manner prescribed by § 201.14(b) of this chapter (Rule 14(b) of the Commission's rules of practice).

The Commission finds that the foregoing rules involve a matter of practice or procedure and that notice and subsequent procedure pursuant to section 4 of the Administrative Procedure Act are not required. Also, the Commission finds that the provisions of section 4(c) of the Administrative Procedure Act regarding the postponement of the effective date are inapplicable inasmuch as this is not a substantive rule.

Accordingly, the foregoing action is taken pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940 and the Investment Advisers Act of 1940, and shall become effective April 1, 1964.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

MARCH 12, 1964.

[F.R. Doc. 64-2728; Filed, Mar. 20, 1964;
8:46 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER A—GENERAL

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

Tannic Acid and Barium Enema Preparations

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (secs. 502(f)(1), 701(a), 52 Stat. 1051, as amended, 1055; 21 U.S.C. 352(f), 371(a)) and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR 2.90; 29 F.R. 471), Part 3 is amended by adding thereto the following new section:

§ 3.12 Tannic acid and barium enema preparations.

(a) It has become a widespread practice for tannic acid to be added to barium enemas to improve X-ray pictures. Tannic acid is capable of causing diminished liver function and severe liver necrosis when absorbed in sufficient amounts.

The medical literature reports a number of deaths associated with the addition of tannic acid to barium enemas. There is a lack of scientific evidence to establish the conditions, if any, under which tannic acid is safe and effective for use in enemas. Tannic acid for rectal use to enhance X-ray visualization is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act.

(b) In view of the hazards involved when tannic acid is used in barium enemas, any shipments of tannic acid labeled to come within the exemptions under 502(f) of the Act containing such phrases as: "Caution: For manufacturing, processing, or repackaging," "For prescription compounding," or "Diagnostic reagent—For professional use only" will be regarded by the Commissioner of Food and Drugs as misbranded within the meaning of section 502(f) of the Federal Food, Drug, and Cosmetic Act unless the label and the labeling bear conspicuously a warning to the effect: "Warning—Not for use in enemas."

(c) Any tannic acid intended for use by man and found within the jurisdiction of the Federal Food, Drug, and Cosmetic Act labeled contrary to this section after 60 days from the date of its publication in the FEDERAL REGISTER may be made the subject of regulatory proceedings.

(Secs. 502(f), 701(a), 52 Stat. 1051, as amended, 1055; 21 U.S.C. 352(f), 371(a))

Dated: March 17, 1964.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 64-2764; Filed, Mar. 20, 1964;
8:51 a.m.]

PART 8—COLOR ADDITIVES

Subpart D—Listing of Color Additives for Food Use Exempt From Certification

TOASTED PARTIALLY DEFATTED COOKED COTTONSEED FLOUR; CONFIRMATION OF EFFECTIVE DATE; DELETION FROM PROVISIONAL LISTINGS

1. Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (b)(1), (c)(2), 74 Stat. 399, 402; 21 U.S.C. 376 (b)(1), (c)(2)), and in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), notice is given that no objections were filed to the order published in the FEDERAL REGISTER of February 6, 1964 (29 F.R. 1801), with reference to the color additive toasted partially defatted cooked cottonseed flour. Accordingly, the amendments promulgated by that order will become effective April 6, 1964.

2. Effective April 6, 1964, § 8.501 *Provisional lists for color additives* is amended by deleting from paragraph (e) the item "Toasted partially defatted cooked cottonseed flour."

(Sec. 706 (b)(1), (c)(2), 74 Stat. 399, 402; 21 U.S.C. 376 (b)(1), (c)(2))

Dated: March 17, 1964.

GEO. P. LARRICK,
Commissioner of Food and Drugs.
[F.R. Doc. 64-2743; Filed, Mar. 20, 1964;
8:47 a.m.]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting from Contact with Containers or Equipment and Food Additives Otherwise Affecting Food

ADHESIVES

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 1323), filed by American Cyanamid Company, Berdan Avenue, Wayne, New Jersey, 07470, and other relevant material, has concluded that the food additive regulations should be amended to provide for the use of the monomer triallyl cyanurate in the production of polymers used in food-packaging adhesives. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), the list "Components of Adhesives" in paragraph (c)(5) of § 121.2520 *Adhesives* is amended by inserting alphabetically in the list of monomers under the item "Polymers: Homopolymers and copolymers * * *", the new monomer: Triallyl cyanurate.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348 (c)(1))

Dated: February 28, 1964.

WINTON B. RANKIN,
Assistant Commissioner for Planning.
[F.R. Doc. 64-2744; Filed, Mar. 20, 1964;
8:48 a.m.]