Rules and Regulations

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 67-SO-106; Amdt. 39-508]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Model PA 32–300 Airplanes

There have been reports of the flexible engine air inlet duct reinforcing wire coils becoming detached from the inside of the duct wall. This allows the duct to collapse and restricts the air flow into the engine induction system causing a loss of engine power or engine stoppage.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 F.R. 13697), § 39.13 of Part 39 is amended by adding the following new airworthiness directive.

PIPER—Applies to Models PA-32-300, PA-32S-300 series airplanes, Serial Numbers 32-15, 32-40000 through 32-40399.

Compliance required within the next 10 hours' time in service after the effective date of this AD unless already accomplished and thereafter at intervals not to exceed 25 hours' time in service from the last inspection. To prevent the possibility of restricting air flow through the engine air induction system, accomplish the following:

(a) Inspect the flexible duct Piper P/N 457599 between the engine air box and engine throttle body assembly for loose and/or collapsed wire reinforcing coils inside the duct. Also each end of the reinforcing wire must be secured under the duct end clamps. Inspection may be accomplished by removal of the entire engine cowling and the intake air box cover, P/N 68047-00.

(b) If loose and/or collapsed wire reinforcing coils are found, remove the duct from service. Install a new duct, P/N 457599, making sure that the wire reinforcing coils extend over the pilot tubes at each end and are clamped under the clamps, P/N 554883.

Methods which will eliminate the requirement for the repetitive inspections may be utilized, if approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region. The inspection time intervals (other than for the initial inspection) may be adjusted up to a maximum of 5 hours to coincide with aircraft annual or 100-hour scheduled inspections.

This directive becomes effective November 8, 1967.

(Secs. 313(a), 601, and 603, of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, and 1423)

Issued in East Point, Ga., on November 2, 1967.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 67-13268; Filed, Nov. 7, 1967; 8:49 a.m.]

[Airspace Docket 67-CE-120]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

The purpose of these amendments to Part 71 of the Federal Aviation Regulations is to alter the Benton Harbor, Mich., control zone and transition area.

New ILS and ADF instrument approach procedures have been developed to serve Benton Harbor, Mich., Ross Field, which will become effective upon completion of a new partial instrument landing system currently being constructed for Runway 27 at this airport. Concurrently, with the effectiveness of these approach procedures, the existing MH facility located on Ross Field will be decommissioned and the ADF instrument approach procedures predicated on this facility will be canceled. As a result, controlled airspace must be provided for the protection of aircraft executing the new instrument approach procedures and deleted with respect to the canceled ADF approach procedures.

Since the proposed alterations and deletions of airspace will reduce the existing designated Benton Harbor, Mich., control zone and transition area, they will not impose any additional burden on any person. Therefore, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0001 e.s.t., February 1, 1968, as hereinafter set forth:

(1) In § 71.171 (32 F.R. 2071), the following control zone is amended to read:

BENTON HARBOR, MICH.

Within a 5-mile radius of Ross Field (latitude 42°07'40" N., longitude 86°25'40" W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

(2) In § 71.181 (32 F.R. 2148), the following transition area is amended to read:

BENTON HARBOR, MICH.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Ross Field (latitude 42°07'40" N., longitude 86°25'40" W.), and within 2 miles each side of the ILS back course and Keller, Mich., VORTAC 266° radial extending from the 7-mile radius area to 12 miles west of the airport.

(Sec. 307(a) of the Federal Aviation Act of 1958, 49 U.S.C. 1348)

Issued at Kansas City, Mo., on October 25, 1967.

DANIEL E. BARROW,
Acting Director Central Region.

[F.R. Doc. 67-13175; Filed, Nov. 7, 1967; 8:46 a.m.]

[Airspace Docket No. 67-CE-94]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On page 12120 of the FEDERAL REGISTER dated August 23, 1967, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Fargo, N. Dak.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the amendment as so proposed is hereby adopted, subject to the following change:

The Hector Field coordinates recited in the Fargo, N. Dak., transition area designation as "latitude 46°55'05" N., longitude 96°49'00" W." are changed to read "latitude 46°55'05" N., longitude 96°48'55" W.".

This amendment shall be effective 0001 e.s.t., January 4, 1968.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on October 25, 1967.

DANIEL E. BARROW,
Acting Director, Central Region.

In § 71.181 (32 F.R. 2148), the following transition area is amended to read:

FARGO, NORTH DAKOTA

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Hector Field (latitude 46°55'05" N., longitude 96°48'55" W.); within 2 miles each side of the Fargo ILS localizer north course, extending from the 7-mile radius area to 8 miles north of the RBN; within 2 miles each side of the Fargo VORTAC 007° radial, extending from the 7-mile radius area to 24 miles north of the VORTAC; and within 5 miles west and 8 miles east of the Fargo ILS localizer south course, extending from 5 miles north to 12 miles south of the LOM; and that airspace extending upward from 1,200 feet above the surface within a 35-mile radius of the Fargo VORTAC; within a 36-mile radius of the Fargo VORTAC, extending from a line 9 miles west of and parallel to the Fargo VORTAC 353° radial, clockwise to a line 5 miles east of and parallel to the Fargo VORTAC 034° radial; and within 10 miles east and 7 miles west of the Fargo VORTAC 187° radial, extending from the 35-mile radius area to 56 miles south of the VORTAC.

[F.R. Doc. 67-13176; Filed, Nov. 7, 1967; 8:46 a.m.]

[Airspace Docket No. 67-CE-101]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On page 12690 of the FEDERAL REGISTER dated September 1, 1967, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Indianapolis, Ind.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set fourth below.

This amendment shall be effective 0001 e.s.t., January 4, 1968.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on October 25, 1967.

DANIEL E. BARROW,
Acting Director, Central Region.

In § 71.181 (32 F.R. 2148), the following transition area is amended to read:

INDIANAPOLIS, IND.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Indianapolis Municipal (Weir-Cook) Airport (latitude 39°43'35" N., longitude 86°17'05" W.); within a 5-mile radius of Bob Shank Airport (latitude 39°49'15" N., longitude 86°14'30" W.); within 2 miles each side of the Indianapolis, Ind., VORTAC 262° radial extending from the 5-mile radius area to the VORTAC; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at latitude 40°07'00" N., longitude 87°23'00" W.; to latitude 40°07'00" N., longitude 86°00'00" W.; to latitude 40°00'00" N., longitude 86°00'00" W.; to latitude 40°00'00" N., longitude 85°30'00" W.; to latitude 39°30'00" N., longitude 85°30'00" W.; to latitude 39°30'00" N., longitude 86°06'00" W.; to latitude 38°57'00" N., longitude 86°06'00" W.; to latitude 38°57'00" N., longitude 88°00'00" W.; north along longitude 88°00'00" W., to the north edge of V-50; thenec to the point of beginning.

[F.R. Doc. 67-13177; Filed, Nov. 7, 1967; 8:46 a.m.]

[Airspace Docket No. 67-SO-88]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On September 20, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 13293), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Cedartown, Ga., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

Subsequent to the publication of the notice, the geographic coordinate (lat. 34°01'20" N., long. 85°08'50" W.) for the Polk County Airport was obtained from Coast and Geodetic Survey. Accordingly, action is taken herein to add the geographic coordinate for the airport in the description of this transition area.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., January 4, 1968, as hereinafter set forth.

In § 71.181 (32 F.R. 2148), the following transition area is added:

CEDARTOWN, GA.

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Polk County Airport (lat. 34°01'20" N., long. 85°08'50" W.).

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348(a))

Issued in East Point, Ga., on October 27, 1967.

JAMES S. ROGERS,
Director, Southern Region.

[F.R. Doc. 67-13178; Filed, Nov. 7, 1967; 8:46 a.m.]

Title 7—AGRICULTURE

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 293]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.593 Lemon Regulation 293.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified to provide for continued size regulation of lemons; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on October 31, 1967.

(b) *Order.* (1) During the period November 12, 1967, through November 16, 1968, no handler shall handle any lemons, grown in District 1, District 2, or District 3, which are of a size smaller than 1.82 inches in diameter, which shall be the largest measurement at right angles to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the lemons in any type of container may measure less than 1.82 inches in diameter.

(2) As used in this section, "handle," "handler," "District 1," "District 2," and "District 3" shall have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: November 3, 1967.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 67-13216; Filed, Nov. 7, 1967; 8:49 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER B—GUIDES AND TRADE PRACTICE RULES

RECODIFICATION OF CERTAIN PROVISIONS

In Part 14 of Subchapter A, §§ 14.3, 14.5, 14.6, and 14.8 through 14.15 are transferred to Subchapter B and recodified without substantive change as Parts 228 to 237, respectively. The heading of Subchapter B is amended to read as set forth above and Parts 228 to 237 are added to read as follows:

PART 228—TIRE ADVERTISING AND LABELING GUIDES

AUTHORITY: The provisions of this Part 228 issued under secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 228.0 "Industry Product" and "Industry Member" defined.

As used in this part, the terms "Industry Product" or "Product" shall mean pneumatic tires for use on passenger automobiles, station wagons, and similar vehicles, or the materials used therein. The term "Industry Member" shall mean: All persons or firms who are engaged in the manufacture, sale or distribution of industry products as above defined whether under the manufacturer's or a private brand; and the manufacturers of passenger automobiles, station wagons, and similar vehicles for which industry products are provided as original equipment.

§ 228.0-1 Use of guide principles.

The following general principles will be used in determining whether terminology and other direct or indirect representations subject to the Commission's jurisdiction regarding industry products conform to laws administered by the Commission.

§ 228.1 Tire description.

(a) The purchase of tires for a motor vehicle is an extremely important matter to the consumer. Not only are substantial economic factors involved, but in most instances the purchaser will entrust the safety of himself and others to the performance of the product.

(b) To avoid being deceived, the consumer must have certain basic information. Certain of this information should be provided before the purchaser makes his choice but other is essential throughout the life of the tire.

(1) *Disclosure before the sale.* The following information should be disclosed in point of sale material which is prominently displayed and of easy access, on the premises where the purchase is to be made in order to apprise the consumer:

(i) *Load-carrying capacity of the tire.* This information is essential to assure the purchaser that the tires he selects are capable of safely carrying the intended load. This information should consist of the maximum load-carrying capacity as related to various recommended air pressures and may include data which indicates the effect such varying pressures will have on the operation of the automobile. All such information shall be based on actual tests utilizing adequate and technically sound procedures. The test procedures and results shall be in writing and available for inspection.

(ii) *Generic name of cord material.* Different cord materials can have performance characteristics that will affect the consumer's selection of tires. These various characteristics are widely advertised, and the consumer is aware of the distinctions. Without a disclosure of the generic name of the cord material, the consumer is unable to consider this factor in his purchase.

(iii) *Actual number of plies.* Consumers have preference for industry products of a stated type of construction (e.g., 2 ply v. 4 ply). Without adequate disclosure the consumer is denied the basis for considering this factor in his selection.

NOTE: Where the tire is of radial construction the ply count disclosure will be satisfied by the statement "radial ply."

(2) *Disclosure on the tire.* The following information should be clearly disclosed in a permanent manner on the outside wall of the tire:

(i) *Size.* Size is extremely important not only to insure that the tire will fit the vehicle wheel, but because it also is a determining factor as to the load-carrying capacity of the vehicle.

(ii) *Whether tire is tubeless or tube type.*

(iii) *Actual number of plies.*

NOTE: Where the tire is of radial construction the ply count disclosure will be satisfied by the statement "radial ply."

(3) *Other disclosures*—(i) *Generic name of cord material used in ply.* A disclosure of the generic name of the cord material used in the ply of the tire should be made on a label or tag prominently displayed on the tire itself, and affixed in such a fashion that it cannot be easily removed prior to sale.

(ii) *Load-carrying capacity and inflation pressure.* One of the most important factors in obtaining tire performance is proper care and use. Included in such care is inflating the tire to the required level as related to load-carrying capacity and use. To insure that such pressures are maintained by the user and the tire is not overloaded beyond its safe capacity, a table or chart should be provided for retention by the purchaser. This will apprise the purchaser of the load-carrying capacity of the tires as related to the range of recommended air pressures and use. It may also supply data which indicate the effect such varying pressures will have on the operation of the automobile.

NOTE: Automobile manufacturers who provide tires as original equipment with new automobiles should incorporate such information in the owner's manual given to new car purchasers. To permit the car owner to calculate for himself the proper size tires for his car, the owner's manual should also contain the following information: (1) The curb weight of the empty vehicle, and the distribution of the weight, in pounds, on each tire; (2) The total weight of the vehicle when loaded to its designed capacity (e.g., for a six passenger car, the weight of the car when loaded with six passengers and 240 pounds of baggage) and the distribution of such weight, in pounds, on each tire.

[Guide 1]

§ 228.2 Designations of grade, line, level, or quality.

(a) There exists today no industry-wide, government or other accepted system of quality standards or grading of industry products. Within the industry, however, a variety of trade terminology has developed which, when used in conjunction with consumer transactions, has the tendency to suggest that a system of quality standards or grading does in fact exist. Typical of such terminology are the expressions "line," "level," and "premium." The exact meaning of such terminology may vary from one industry member to another. Therefore, the "1st line" or "100 level" or "premium" tire of one industry member may be grossly inferior to the "1st line" or "100 level" or "premium" tire of another member since in the absence of an accepted system of grading or quality standards, each member can determine what "line," "level," or "premium" classification to attach to a tire.

(b) The consumer does not understand the significance of the absence of accepted grading or quality standards and is likely to assume that the expressions "line," "level," and "premium" connote valid criteria. Since the consumer is likely to misinterpret the meaning of such terminology, he may be deceived into purchasing an inferior product because it has been given such designation.

(c) In the absence of an accepted system of grading or quality standards for industry products, it is improper to represent, either through the use of such expressions as "line," "level," "premium" or in any other manner, that such a system exists, unless the representation is accompanied by a clear and conspicuous disclosure:

(1) That no industrywide or other accepted system of quality standards or grading of industry products currently exists, and

(2) That representations as to grade, line, level, or quality, relate only to the private standard of the marketer of the tire so described (e.g., "XYZ first line").

(d) Additionally, products should not be described as being "first line" unless the products so described are the best products, exclusive of premium quality products embodying special features, of the manufacturer or brand name distributor applying such designation. [Guide 2]

§ 228.3 Deceptive designations.

In the advertising or labeling of products, industry members should not use designations for grades of products they offer to the public:

(a) Which have the capacity to deceive purchasers into believing that such products are equal or superior to a better grade or grades of their products when such conclusion would be contrary to fact (for example, if the "first line" tire of a manufacturer is designated as "Standard," "High Standard," or "Deluxe High Standard," the tires of that manufacturer which are of lesser quality should not be designated or described as "Super Standard," "Supreme High Standard," "Super Deluxe High Standard," or "Premium"), or

(b) Which are otherwise false or misleading.

NOTE: When a manufacturer applies a designation to a product which falsely represents or implies the product is equal or superior in quality to its better grade or grades of products, it is responsible for any resulting deception whether it is a direct result of the designation or a result of the placing in the hands of others a means and instrumentality for the creation by them of a false and deceptive impression with respect to the comparative quality of products made by that manufacturer.

[Guide 3]

§ 228.4 Original equipment.

Original equipment tires are understood to mean the same brand and quality tires used generally as original equipment on new current models of vehicles of domestic manufacture. A tire which was formerly but is not currently used as "Original Equipment," should not be described as "Original Equipment" without clear and conspicuous disclosure in close conjunction with the term, of the latest actual year such tire was used as "Original Equipment." [Guide 4]

§ 228.5 Comparative quality and performance claims.

Representations and claims made by industry members that their products are superior in quality or performance to other products should not be made unless:

(a) The representation or claim is based on an actual test utilizing adequate and technically sound procedures of the performance of the advertised product and of the product with which it is compared; the test procedure, results of which are in writing and available for inspection; and

(b) The basis of the comparison is clearly stated and the comparison is based on identical conditions of use. Dangling comparatives should not be used.

(c) Claims or representations that one tire is comparable or identical to another should not be used unless the advertiser is able to establish that such tires are comparable not only as respects the molds in which the tires are made, but also as respects all significant materials used in their construction. [Guide 5]

§ 228.6 Ply count, plies, ply rating.

A ply is a layer of rubberized fabric contained in the body of the tire and extending from one bead of the tire to the other bead of the tire. The consumer is interested in, and is entitled to know, certain information in regard to plies in tires. However, a great deal of terminology connected with plies which is utilized in advertising has the tendency to confuse and deceive the public and is accordingly inappropriate.

(a) It is improper to utilize any statement or depiction which denotes or implies that tires possess more plies than they in fact actually possess. Phrases such as "Super 6" or "Deluxe 8" as descriptive of tires of less than 6 or 8 plies, respectively, should not be used.

(b) The actual number of plies in a tire is not necessarily determinative of the ultimate strength, performance or quality of the product. Variations in the amount and type of fabric utilized in the ply and other construction features of the tire will determine the ultimate strength, performance or quality of the product. Through variations in these construction aspects, a tire of a stated number of plies may be inferior in strength, quality, and performance to another tire of lesser actual ply count. Accordingly, it is improper to represent in advertising, or otherwise, that solely because a product has more plies than another, it is superior.

(c) (1) The expression "ply rating" as used in the trade is an index of tire strength. Each manufacturer, however, has his own system of computing "ply rating." Thus, a product of one industry member of a stated "ply rating" is not necessarily of the same strength as the product of another member with the identical rating. While the expression "ply rating" may have significance to industry members, in the absence of a publicized system of standardized ratings, the use of such expressions in connection with sales to the general public may be deceptive.

(2) To avoid deception, the expression "ply rated" or "ply rating" or any similar language should not be used unless said claim is based on actual tests utilizing adequate and technically sound procedures, the results of which are in writing and available for inspection. Further, certain disclosures must be made when such expressions are used in connection with consumer transactions.

(3) When ply rating is stated on the tire itself, it must be accompanied in immediate conjunction therewith, and in identical size letters, the disclosure of the actual ply count. In addition, there must be a tag or label attached to the tire or its packaging, of such permanency that it cannot easily be removed prior to sale to the consumer, which tag or label contains a clear and conspicuous disclosure:

(i) That there is no industrywide definition of ply rating; and

(ii) Of the basis of comparison of the claimed rating. (For example, "2-ply tire, 4-ply rating means this 2-ply tire is equivalent to our current or most recent 4-ply nylon cord tire.")

(4) When ply rating is used in advertising or in other sales or promotional materials, in addition to the disclosure of actual ply count as indicated, it must be accompanied by the disclosure:

(i) That there is no industrywide definition of ply rating; and

(ii) Of the basis of comparison of the claimed rating. (For example, "2-ply tire, 4-ply rating means this 2-ply tire is equivalent to our current or most recent 4-ply nylon cord tire.") [Guide 6]

§ 228.7 Cord materials.

(a) The fabric that is utilized in the ply is known as the cord material. The use of a particular type of cord material may be determined by the use to which the tire will be placed. One type of cord material may provide one desired characteristic, but not be used because of other characteristics which may be unfavorable.

(b) The type of cord material utilized in a tire is not necessarily determinative of its ultimate quality, performance or strength. Through variations in the denier of the material, the amount to be used and other construction aspects of the tire, the ultimate quality, performance, and strength is determined.

(c) It is improper to represent in advertising, or otherwise, that solely because a particular type of cord material is utilized in the construction of a tire, it is superior to tires constructed with other types of cord material. Such advertising is deceptive for it creates that impression in the consumer's mind whereas in fact it does not take into consideration the other variable aspects of tire construction.

(d) When the type of cord material is referred to in advertising, it must be made clear that it is only the cord that is of the particular material and not the entire tire. For example, it would be improper to refer to a product as "Nylon Tire." The proper description is "Nylon Cord Tire." Similarly, when the manufacturer of the cord material is mentioned, it should be made clear that he did not manufacture the tire. For example, a tire should be described as

"Brand X Nylon Cord Material" and not "Brand X Nylon Tire."

(e) Cord material should be identified by its generic name when referred to in advertising. [Guide 7]

§ 228.8 "Change-Overs," "New Car Take Offs," etc.

Industry products should not be represented as "Change-Overs" or "New Car Take Offs" unless the products so described have been subjected to but insignificant use necessary in moving new vehicles prior to delivery of such vehicles to franchised distributor or retailer. "Change-Overs" or "New Car Take Offs" should not be described as new. Advertisements of such products should include a clear and conspicuous disclosure that "Change-Overs" or "New Car Take Offs" have been subjected to previous use. [Guide 8]

§ 228.9 Retreaded and used tires.

Advertisements of used or retreaded products should clearly and conspicuously disclose that same are not new products. Unexplained terms, such as "New Tread," "Nu-Tread" and "Snow Tread" as descriptive of such tires do not constitute adequate disclosure that tires so described are not new. All such tires should be clearly designated as "retreads" or "retreaded." [Guide 9]

§ 228.10 Disclosure that products are obsolete or discontinued models.

Advertisements should clearly and conspicuously disclose that the products offered are discontinued models or designs or are obsolete when such is the fact.

NOTE: The words "model" and "design" used in connection with tires include width, depth, and pattern of the tread as well as other aspects of their construction.

[Guide 10]

§ 228.11 Blemished, imperfect, defective, etc., products.

Advertisements of products which are blemished, imperfect, or which for any reason are defective, should contain conspicuous disclosure of that fact. In addition, such products should have permanently stamped or molded thereon or affixed thereto and to the wrappings in which they are encased, a plain and conspicuous legend or statement to the effect that such products are blemished, imperfect, or defective. Such markings by a legend such as "XX" or by a color marking or by any other code designation which is not generally understood by the public are not considered to be an adequate disclosure. [Guide 11]

§ 228.12 Pictorial misrepresentations.

(a) It is improper to utilize in advertising, any picture or depiction of an industry product other than the product offered for sale. Where price is featured in advertising, any picture or depiction utilized in connection therewith should be the exact tire offered for sale at the advertised price.

(b) For example, it would be improper to depict a white side wall tire with a designated price when the price is applicable to black wall tires. Such practice would be improper even if a disclosure is made elsewhere in the advertisement that the featured price is not for the depicted whitewalls. [Guide 12]

§ 228.13 Racing claims.

(a) Advertising in connection with racing, speed records, or similar events should clearly and conspicuously disclose that the tires on the vehicle are not generally available all purpose tires, unless such is the fact.

(b) The requirement of this section is applicable also to special purpose racing tires, which although available for such special purpose, are not the advertiser's general purpose product.

(c) Similarly, designations should not be utilized in conjunction with any industry product which falsely suggest, directly or indirectly, that such product is the identical one utilized in racing events or in a particular event. [Guide 13]

§ 228.14 Bait advertising.

(a) Bait advertising is an alluring but insincere offer to sell a product which the advertiser in truth does not intend or want to sell. Its purpose is to obtain leads as to persons interested in buying industry products and to induce them to visit the member's premises. After the person visits the premises, the primary effort is to switch him from buying the advertised product in order to sell something else, usually at a higher price.

(b) No advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product. Among the acts and practices which will be considered in determining if an advertisement is bona fide are:

(1) The advertising of a product at a price applicable only to unusual or off size tires or for special purpose tires;

(2) The refusal to show or sell the product offered in accordance with the terms of the offer;

(3) The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that the supply is limited and/or the merchandise is available only at designated outlets;

(4) The disparagement by acts or words of the advertised product or the disparagement of the guarantee, credit terms, or in any other respect in connection with it;

(5) Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product. [Guide 14]

§ 228.15 Deceptive pricing.

(a) *Former price comparisons.* One form of advertising in the replacement market is the offering of reductions or savings from the advertiser's former price. This type of advertising may take many forms, of which the following are examples:

Formerly $----------—Reduced to $---------
50% Off—Sale Priced at $---------

Such advertising is valid where the basis of comparison, that is, the price on which the represented savings are based, is the actual bona fide price at which the advertiser recently and regularly sold the advertised tire to the public for a reasonably substantial period of time prior to the advertised sale. However, where the basis of comparison (1) is not the advertiser's actual selling price, (2) is a price which was not used in the recent past but at some remote period in the past, or (3) is a price which has been used for only a short period of time and a reduction is claimed therefrom, the claimed savings or reduction is fictitious and the purchaser deceived. Following are examples illustrating the application of this provision:

Example 1. Dealer A advertises a tire as follows: "Memorial Day Sale—Regular price of tire, $15.95—Reduced to $13.95." During the preceding 6 months Dealer A has conducted numerous "sales" at which the tire was sold in large quantities at the $13.95 price. The tire was sold at $15.95 only during periods between the so-called "sales." In these circumstances, the advertised reduction from a "regular" price of $15.95 would be improper, since that was not the price at which the tire was recently and regularly sold to the public for a reasonably substantial period of time prior to the advertised sale.

Example 2. Dealer B engaged in sale advertising weekly on the last 3 days of the week. It was his practice during the selling week to offer a particular line of tires at $24.95 on Monday, Tuesday, and Wednesday, and advertise the same line as "Sale Priced $19.95" on the final 3 days of the selling week. Use of the price for only 3 days prior to the reduction, even though the higher price is resumed after 3 days of "sale" advertising would not constitute a basis for claiming a price reduction. The higher price was not the regular selling price for a reasonably substantial period of time. Furthermore, when the higher price is used only for the first 3 days of the week and another price is used for the final 3 days, the higher price has not been established as a regular price, especially when most sales are made at the lower price during the final 3-day period.

(b) *Trade area price comparisons.* (1) Another recognized form of bargain advertising is to offer tires at prices lower than those being charged by others for the same tires in the area where the advertiser is doing business. Examples of this type of advertising where used in connection with the advertiser's own price are:

Sold Elsewhere at $---------
Retail Value $---------

(2) The tire market, because of its nature, requires that special care and precaution be exercised before this type of advertising is used. Trade area price comparisons are understood by purchasers to mean that the represented bargain is a reduction or saving from the price being charged by representative retail outlets for the same tires at the time of the advertisement.

(3) If a tire manufacturer decides to conduct a promotion of a particular tire, reduces the price in his wholly owned stores and independent dealers follow the promotion price, the "sale" price has become the retail price in the area and it

would be deceptive to represent that this "sale" price is reduced from that charged by others. In most circumstances where a promotion is sponsored by the manufacturer and is followed by the wholly owned stores and most of the independent dealers in the area, such trade area price comparisons would be improper.

(4) A trade area price comparison would be valid where an individual dealer, acting on his own, decides to lower the price of a tire significantly below that being charged by others in his area. In this situation, he would be honestly offering a genuine reduction from the price charged by others in his area.

(5) When using a retail price comparison great care should be exercised to make the advertising clear that the basis of the reduction or saving is the price being charged by others and not the advertiser's own former selling price.

(c) *Substantiality of reduction or savings.* In order for an advertiser to represent that a price is reduced or offers savings to purchasers without specifying the extent thereof, it is necessary that the represented reduction or savings be significant. When the amount of the reduction or savings is not stated in advertising and is not substantial enough to attract and influence prospective purchasers if they knew the true facts, the representation is deceptive.

Example. Dealer C advertises a Fourth of July sale featuring X brand tires at a claimed reduction in price. The sale price in the advertisement is stated as $14.75 per tire. The advertisement does not state the former price of the tire. The tire previously had been sold at $14.95. Under the circumstances, the advertisement would be deceptive. The 20-cent reduction in price is insignificant when compared with the actual selling price of the tire. Purchasers generally, if they knew the amount of the reduction, would not be influenced sufficiently thereby to cause them to purchase the tire at the reduced price.

(d) *Representations of specific price reductions and savings.* (1) Advertisements which offer a specified amount or percentage of price reduction or savings should not be used where there is no determinable regular selling price, whether it be the advertiser's former price or the retail price in the area.

(2) The lack of a determinable actual selling price does not preclude all "sale" advertising. For example, if a dealer desires to offer a tire at a price which represents a significant reduction from the lowest price in the range of prices at which he has actually sold the tire in the recent regular course of his business, it would not be deceptive to advertise the tire with such representations as "Sale Priced," "Reduced" or "Save."

(3) However, an advertiser is not precluded from offering specific savings from the lowest price at which he has actually sold tires, provided that the advertising clearly states that the offered savings are a reduction from the lowest previous selling price and not from the advertiser's regular selling price.

(e) *No trade-in prices.* (1) The most common device used in advertising is to offer a purported reduction or savings from a so-called "no trade-in" price. Prospective purchasers are entitled to believe this to mean that they would realize a savings from the price they would have had to pay for the tire prior to the "Sale," either in cash or in cash plus the fair value of a traded-in tire. If this is not true, purchasers are deceived. Where a significant number of sales in relation to a seller's total sales is not made at the so-called "no trade-in" price and such price appreciably exceeds the price purchasers would normally pay the seller (including the fair value of any trade-in), use of the price as a basis for claiming a reduction or savings would be deceptive and contrary to this part.

(2) Representations of high trade-in allowances are sometimes used in combination with fictitious "no trade-in" prices to deceive purchasers. These may take the form of direct representations that a specified amount (usually significantly higher than the value of the tire carcass) will be allowed for a trade-in tire, or, representations of specific savings in the purchase of a new tire when a tire is traded in during a "sale." In either case, the purchaser is given the illusion of a bargain in the guise of a high trade-in allowance which he does not in fact receive if the amount of the allowance is deducted from a fictitiously high "no trade-in" price.

Example 1. An advertisement offers a 25 percent reduction during a May tire sale. The body of the advertisement sets forth a "no trade-in" price as the price from which the represented 25 percent reduction is made. However, such price represents the price at which only 15 percent of the advertiser's total sales were made and which was appreciably higher than the price at which the tire usually sold with a trade-in even with the addition of an amount representing a reasonable, bona fide trade-in allowance. Use of the "no trade-in" price in the advertisement is deceptive.

Example 2. Dealer D advertises, "Now Get $4 to $10 Per Tire Trade-In Allowance" in connection with the sale of a certain tire. Dealer D has regularly sold the tire for $12 to customers having a good recappable tire to offer in trade. During the regular course of Dealer D's business he has granted allowances ranging from 50 cents to $3, depending upon the condition of the tire taken in trade. During the advertised sale, however, Dealer D sells all of the tires at the manufacturer's suggested "no trade-in" price of $22 and deducts from that price the inflated trade-in allowances. Under the circumstances, the advertisement would be deceptive. Dealer D has not granted the allowances in connection with his regular selling price but has used instead the fictitious "no trade-in" price as a basis for offering the inflated allowances. The consumer has been led to believe that his old tire is worth far more than its actual value and Dealer D receives what has been his regular selling price or, in some instances, an amount in excess of the regular price, depending upon the allowance granted.

(f) *Combination offers.* (1) Frequent use is made in the tire market of purported bargain advertising which offers "free" or at a represented reduced price a tire, some other article of merchandise or a service, with the purchase of one or more tires at a specified price. The following are typical examples of this type of offer:

Buy 3, get four at no additional cost.
Buy one tire at $____, get second tire at 50% off.
Get a wheel free with purchase of each snow tire.
Free wheel alignment with purchase of two new tires.

Such advertising is understood by purchasers to mean that the price charged by the advertiser for the initial tire or tires to be purchased is the price at which they have been regularly sold by the advertiser for a reasonably substantial period of time prior to the sale, and that the amount of the purported reduction or the value of the so-called "free" article or service represents actual savings. If the price of the tires to be purchased is not the advertiser's regular selling price, purchasers are deceived.

Example. Dealer E advertises "2nd Tire ½ Off When You Buy First Tire At Price Listed Below—No Trade-In Needed!" In the body of the advertisement the first tire is listed as costing $25.15 and the second tire $12.57. The figure listed as the price for the first tire is not Dealer E's regular selling price, but the manufacturer's suggested "no trade-in" price. E's regular selling price prior to the so-called sale had been $18.85 per tire. Under the circumstances, the "½ Off" offer would be deceptive. The basis for the advertised offer is not the advertiser's actual selling price for the tire. While consumers are led to believe that they are being afforded substantial savings by purchasing a second tire, in fact they are paying Dealer E's regular selling price for two tires.

(g) *Federal Excise Tax.* Since the Federal Excise Tax on tires is assessed on the manufacturer and is based on the weight of the materials used and not the retail selling price, the tax should be included in the price quoted for a particular tire, or the amount of the tax set out in immediate conjunction with the tire price. For example, assuming the tax on a particular tire to be $1 and the advertised selling price $9.95, the price should be stated as "$10.95" or "$9.95 plus $1 Federal Excise Tax" and not "$9.95 plus Federal Excise Tax."

(h) *Advertising furnished by tire manufacturers.* It is the practice of some tire manufacturers to supply advertising to independent as well as to wholly owned retail outlets in local trade areas. A tire manufacturer providing advertising material to be used in local trade areas by either wholly owned or independent outlets is responsible for the representations made in such advertising and should base price and savings claims on conditions actually existing in the particular areas. In view of price fluctuations at the local level, the general dissemination (i.e., in more than one trade area) to independent retail outlets of advertising material containing stated prices or reduction claims results in deception [1] and is, accordingly, contrary to this part. [Guide 15]

[1] This part does not deal with the question of whether such practice may be improper as contributing to unlawful restraints of trade connected with the enforcement of the Antitrust Laws and the Federal Trade Commission Act.

§ 228.16 Guarantees.

(a) In general, any advertising containing a guarantee representation shall clearly and conspicuously disclose:

(1) *The nature and extent of the guarantee.* (i) The general nature of the guarantee should be disclosed. If the guarantee is, for example, against defects in material or workmanship, this should be clearly revealed.

(ii) Disclosure should be made of any material conditions or limitations in the guarantee. This would include any limitation as to the duration of a guarantee, whether stated in terms of treadwear, time, mileage, or otherwise. Exclusion of tire punctures also would constitute a material limitation. If the guarantor's performance is conditioned on the return of the tire to the dealer who made the original sale, this fact should be revealed.

(iii) When a tire is represented as "guaranteed for life" or as having a "lifetime guarantee," the meaning of the term "life" or "lifetime" should be explained.

(iv) Guarantees which under normal conditions are impractical of fulfillment or for such a period of time or number of miles as to mislead purchasers into the belief the tires so guaranteed have a greater degree of serviceability or durability than is true in fact, should not be used.

(2) *The manner in which the guarantor will perform.* This consists generally of a statement of what the guarantor undertakes to do under the guarantee. Types of performance would be repair of the tire, refund of purchase price or replacement of the tire. If the guarantor has an option as to the manner of the performance, this should be expressly stated.

(3) *The identity of the guarantor.* The identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. Confusion of purchasers often occurs when it is not clear whether the manufacturer or the retailer is the guarantor.

(4) *Pro rata adjustment of guarantees*—(i) *Disclosure in advertising.* Many guarantees provide that in the event of tire failure during the guarantee period a credit will be allowed on the purchase price of a replacement tire, the amount of the credit being in proportion to the treadwear or time remaining under the guarantee. All advertising of the guarantee should clearly disclose the pro rata nature of the guarantee and the price basis upon which adjustments will be made.

(ii) *Price basis for adjustments.* Usually under this type of guarantee the same predetermined amount is used as a basis for the prorated credit and the purchase price of the replacement tire. If this so-called "adjustment" price is not the actual selling price but is an artificial, inflated price the purchaser does not receive the full value of his guarantee. This is illustrated by the following example:

"A" purchases a tire which is represented as being guaranteed for the life of the tread. After 75 percent of the tread is worn, the tire fails. The dealer from whom "A" seeks an adjustment under his guarantee is currently selling the tire for $15 but the "adjustment" price of the tire is $20. "A" receives a credit of 25 percent or $5 toward the price of the replacement tire. This credit is applied not on the actual selling price but on the artificial "adjustment" price of $20. Thus, "A" pays $15 for the new tire which is the current selling price of the tire.

Under the facts described in this illustration the guarantee was worthless as the purchaser could have purchased a new tire at the same price without a guarantee. If 50 percent of the tread remained when the adjustment was made, the purchaser would have received a credit of $10 toward the $20 replacement price. He must still pay $10 for a replacement tire. Had the adjustment been made on the basis of the actual selling price he would have obtained a new tire for $7.50. Thus, while deriving some value from his guarantee he did not receive the value he had reason to expect under the guarantee.

(b) Accordingly, to avoid deception of purchasers as to the value of guarantees, adjustments should be made on the basis of a price which realistically reflects the actual selling price of the tire. The following would be considered appropriate price bases for making guarantee adjustments:

(1) The original purchase price of the guaranteed tire; or

(2) The adjusting dealer's actual current selling price at the time of adjustment; or

(3) A predetermined price which fairly represents the actual selling price of the tire.

Whenever an advertisement for tires includes reference to a guarantee, the advertisement should also disclose, clearly and conspicuously, the price basis on which adjustments will be made. Such disclosure of the price basis for adjustments should be in terms of actual purchase or selling price, e.g., original purchase price, adjusting dealer's current selling price, etc. A mere reference to a guarantor's "adjustment price," for example, would not satisfy this disclosure requirement. In addition, written material disclosing the basis for adjustments should be made available to prospective purchasers at the point of sale, and if the third method of adjustment is chosen, such written material should include the actual price on which guarantee adjustments will be made. [Guide 16]

§ 228.17 Safety or performance features.

Absolute terms such as "skidproof," "blowout proof," "blow proof," "puncture proof" should not be unqualifiedly used unless the product so described affords complete and absolute protection from skidding, blowouts, or punctures, as the case may be, under any and all driving conditions. [Guide 17]

§ 228.18 Other claims and representations.

(a) No claim or representation should be made concerning an industry product which directly, by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving purchasers or prospective purchasers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, safety, strength, condition or life expectancy of such products.

(b) Also included among the prohibitions of this section are claims or representations by members of this industry or by distributors of any component parts of materials used in the manufacture of industry products, concerning the merits or comparative merits (as to strength, safety, cooler running, wear, or resistance to shock, heat, moisture, etc.) of such products, components or materials, which are not true in fact or which are otherwise false or misleading. [Guide 18]

§ 228.19 Snow tire advertising.

Many manufacturers are now offering winter tread tires with metal spikes. Certain States, or other jurisdictions, however, prohibit the use of such tires because of possible road damage. Accordingly, in the advertising of such products, a clear and conspicuous statement should be made that the use of such tires is illegal in certain States or jurisdictions. Further, when such tires are locally advertised in areas where their use is prohibited, a clear and conspicuous statement to this effect must be included. [Guide 19]

PART 229—GUIDES FOR ADVERTISING FALLOUT SHELTERS

AUTHORITY: The provisions of this Part 229 issued under secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 229.0 Definitions.

(a) *Fallout shelter.* A structure which, when properly installed, has a protection factor against fallout gamma radiation of at least 40. Protection factor is the relative reduction in the amount of radiation that would be received by a person in a shelter compared with the amount which he would receive if unprotected. For example, an unprotected person would receive 40 times more radiation than a person in a shelter with a protection factor of 40.

(b) *Blast-resistant or limited blast-resistant shelter.* A structure which qualifies as a fallout shelter and, in addition, is capable of affording a certain minimum amount of protection against the effects of a blast overpressure and associated nuclear and thermal radiation. To qualify as a "blast-resistant shelter" a structure must be capable of withstanding an overpressure of at least 25 pounds per square inch (psi). To qualify as a "limited blast-resistant shelter" a structure must be capable of withstanding an overpressure of at least 5 psi. For example, 5 psi overpressure would occur at a range of about 8½ miles from a 10 megaton, and about 18 miles from a 100 megaton explosion. 30 psi overpressure would occur at a range of about 2½ miles from a 10 megaton, and about 5 miles from a 100 megaton explosion.

NOTE: These definitions are based upon the minimum technical requirements established by the Office of Civil Defense, Department of Defense.

§ 229.1 Fallout and blast protection.

(a) A structure shall not be described or designated as a "fallout shelter," or by any other term of like implication, nor shall any representation be made that a structure affords protection against radioactive fallout, unless such structure meets the minimum requirements set forth in the foregoing definition of a "fallout shelter."

(b) A structure shall not be described or designated as a "blast shelter" or by any other term of like implication.

(c) A structure shall not be described or designated as a "blast-resistant shelter" or a "limited blast-resistant shelter," or by any other term of like implication, unless it meets the applicable minimum requirements set forth in this part.

(d) No representation, express or implied, shall be made that a structure affords protection against nuclear blast unless such structure meets the minimum requirements for a "limited blast-resistant shelter."

(e) No advertisement for, or representation as to the characteristics or capabilities of, any structure designated as a "fallout shelter," "blast-resistant shelter," "limited blast-resistant shelter," or any other term of like implication, shall be used without the inclusion of an affirmative disclosure, in clear and conspicuous terms, of the limits of the protection provided by such structure.

Example 1. With reference to a fallout shelter which does not qualify as a "limited blast-resistant shelter," the advertisement should disclose that the structure has not been designed to afford protection against blast or other related hazards.

Example 2. If the structure qualifies as a "limited blast-resistant shelter" or a "blast-resistant shelter," the advertisement should disclose that the structure, when properly installed, will protect its occupants from a blast of a stated force (such as 10 megatons) occurring an approximate number of miles distant, as set forth in the examples in § 229.0(b).

(f) If a structure meets the minimum requirements for a "fallout shelter," factual and nondeceptive representations may be made as to the degree and nature of fallout protection afforded. Claims that the fallout protection afforded exceeds the requirements shall not be used, however, unless the protection so afforded exceeds the prescribed minimum to a significant degree.

(g) Claims, express or implied, of absolute or complete protection from fallout or blast under any and all conditions shall not be used. [Guide 1]

§ 229.2 Installation.

(a) Any advertisement offering a shelter shall disclose affirmatively that the structure must be properly installed before it can provide protection as a shelter.

(b) No representation shall be made that a shelter can be installed in one day or in any other period of time, unless the installation can in fact be completed within the stated period.

(c) Statements which deceptively exaggerate the ease or economy with which a shelter can be installed shall not be used. [Guide 2]

§ 229.3 Affirmative disclosures as to capacity.

(a) Whenever any representation is made which conveys any implication as to the size or capacity of the advertised shelter, the advertisement must clearly and conspicuously disclose the number of persons the shelter will protect.

(b) Advertisements containing pictures, a quoted price, the use of the word "family," are examples of the type of representations which are subject to the above requirement.

(c) Minimum standard requirements of the Office of Civil Defense in effect at the time the advertised offer is made will be applied in determining the number of persons that the shelter can protect. These requirements take into account the floor space, the air space (cubic volume of the shelter), and the quantity of fresh air required by each person occupying the shelter. [Guide 3]

§ 229.4 Pictorial and other misrepresentations.

(a) No advertisement shall be used which would mislead prospective buyers, through pictorial representations, or in any other manner, as to the protection afforded by a shelter or as to the size, composition, construction, design, capacity, quality, cost or manner of installation, fire or water-resistant properties, location, or utility of a shelter or any part thereof, or which would be misleading in any other material respect.

(b) All construction items featured in a pictorial representation must be included in the price stated in the advertisement.

Example 1. Picturizations of fallout shelters which imply protection against blast effects but which are not capable of providing this protection shall not be used.

Example 2. An advertisement shall not feature the picture of a higher-priced shelter in conjunction with the price of a lower-priced shelter, thus leading consumers to believe the higher-priced model can be purchased at the lower price. [Guide 4]

§ 229.5 Deceptive prices.

(a) No statement, express or implied, shall be used which misrepresents prices or savings in any manner.

(b) Claims that the price offer is for a limited time only or that there will be an increase in price shall not be used unless in fact true.

(c) Advertised or quoted prices shall include the cost of all parts of the structure which are essential to its functioning as a shelter.

(d) Advertised or quoted prices also shall include all charges for the delivery and installation of the shelter, unless the advertisement clearly and conspicuously discloses that delivery or installation charges are not included.

NOTE: The Guides Against Deceptive Pricing furnish guidance respecting other pricing representations and are to be considered as supplementing this section. [Guide 5]

§ 229.6 Financial terms.

(a) Installment purchase plans shall not be misrepresented in any manner nor shall an advertiser claim that loans from any lending institution are available, or that such loans may be insured by the Federal Housing Administration, unless such is the fact.

(b) Down payments shall not be quoted in such a manner as to imply that the down payment constitutes the entire price.

(c) If a shelter is offered at a quoted price under an installment plan which requires additionally the payment of carrying charges, the fact that carrying charges are to be added to the advertised price must be disclosed.

(d) If an interest rate is quoted, it must be simple interest per annum calculated on the basis of the unpaid balance due as reduced after crediting installments as paid. [Guide 6]

§ 229.7 Guarantees.

A guarantee shall not be used in such a manner as to constitute a misrepresentation of a material fact. For example, "guaranteed fallout proof" is a representation that complete protection against fallout is afforded under all conditions. This would constitute a misrepresentation of a material fact, contrary to the provisions of § 229.1.

NOTE: The Guides Against Deceptive Advertising of Guarantees furnish guidance respecting other guarantee representations and are to be considered as supplementing this section. [Guide 7]

§ 229.8 Government connection, approval or endorsement.

If a shelter design meets the minimum requirements of the Office of Civil Defense, the advertiser may reveal this fact in advertising. Even though the shelter design meets the aforementioned requirements, however, an advertiser shall not represent that the shelter has been approved or endorsed by the Government or is being offered by an agency of the Government. Thus, the use of seals, insignia, trade or brand names, or any other term or symbol implying Government connection, approval, or endorsement shall not be used in advertising. [Guide 8]

§ 229.9 Maintenance or repairs.

No statement shall be made which misrepresents the extent to which maintenance, repairs or replacement of a shelter or parts thereof may be required. [Guide 9]

§ 229.10 "Custom made," "custom built," etc.

Claims that a shelter is "custom made," "custom built," or representations of similar import, shall not be used unless the shelter is to be designed and built specially for the particular purchaser. [Guide 10]

§ 229.11 Model shelters.

An advertiser shall not claim that prospective purchasers' homes have been selected for the installation of "model shelters," or that the owners thereof will receive any amount of money, a reduction in price or other thing of value conditioned upon the sale to others of similar shelters, when such is not the fact. [Guide 11]

§ 229.12 Combination or dual-purpose shelters.

Claims to the effect that a shelter serves a combination or dual purpose shall not be used unless factually true. If a shelter can in fact be utilized for other purposes which would not interfere with its use as a shelter, factual and nondeceptive representations as to such other utilization may be made. [Guide 12]

§ 229.13 Bait advertising.

An advertiser shall not offer a shelter for sale unless such offer is made in good faith for the purpose of selling the advertised shelter. Insincere offers to sell, made for the purpose of contacting prospective purchasers and switching them to a shelter other than the shelter advertised, are not to be used. [Guide 13]

§ 229.14 Lottery schemes.

Sales promotional plans involving lottery shall not be used. [Guide 14]

§ 229.15 Scare tactics.

Scare tactics, such as the employment of horror pictures calculated to arouse unduly the emotions of prospective shelter buyers, shall not be used. [Guide 15]

PART 230—GUIDES FOR ADVERTISING SHELL HOMES

AUTHORITY: The provisions of this Part 230 issued under secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 230.1 Extent of completion.

(a) Since the typical shell home does not include such features as wiring, plumbing, heating, interior trim and finish, or other requisite components, an advertiser may not represent that the home is finished or completed to any degree inconsistent with the facts.

(b) For example, an advertiser may not claim that the home in its unfinished state is habitable, or that it has appliances, fixtures, equipment, material or services which are not actually included at the time it is accepted by the purchaser.

(c) In every case the advertiser must clearly and conspicuously disclose it is a shell home. [Guide 1]

§ 230.2 Size or dimensions.

(a) An advertiser shall not misrepresent, pictorially or through any other means, the overall size or dimension of the home or the rooms or space therein.

(b) This section prohibits misrepresentation through the use of picturizations, as well as the publication of figures which exaggerate the size or dimension. [Guide 2]

§ 230.3 Pictorial representations.

(a) All construction items featured in a pictorial representation, such as a porch, carport, chimney, steps, etc., must be included in the price quoted in the advertisement.

(b) An advertisement shall not feature the picture of a higher-priced home in conjunction with the price of a lower-priced home, thus leading prospective purchasers to believe the higher-priced home can be purchased at the lower price.

(c) If the price of any home other than the one pictured in the advertisement is quoted, the price of the pictured home must be disclosed and quoted with equal size and conspicuousness. [Guide 3]

§ 230.4 Savings.

(a) If savings claims are made (1) the basis for the comparison must be clearly disclosed, (2) the savings must be factually true, and (3) the advertising must clearly disclose: (i) That the buyer must furnish the remaining material and (ii) that the saving, if any, is based upon the buyer completing the remainder of the work.

(b) For example, if the advertiser has a factually true savings claim to make in comparison either with a project type or custom-built home, he must disclose the type of home with which the comparison is being made.

(c) In determining whether the savings claim is factually true, the comparison must be based upon a home of like quality, material, size, design and workmanship in the same general locality where the shell home is to be built.

(d) If savings claims other than those outlined in paragraphs (a), (b), and (c) of this section, are utilized, the claim must meet the applicable provisions of the Commission's Guides Against Deceptive Pricing. [Guide 4]

§ 230.5 Financial terms.

(a) Installment purchase plans shall not be misrepresented in any manner. This section prohibits claims to the effect that loans are available from any particular lending institution or through a particular lending program, or that loans are federally insured, or that the seller will finance the purchaser's indebtedness, unless such is the fact.

(b) Down payments shall not be quoted in such a manner as to imply that the down payment constitutes the entire price.

(c) Claims such as "No Money Down" shall not be used unless factually true. Moreover, where such claims are predicated on the existence of other material conditions, such as the possession of a lot free and clear of encumbrances equal in value to 5 percent of the cost of the shell home, such condition or conditions must be clearly and conspicuously disclosed in the advertising.

(d) If a home is advertised at a quoted price under an installment plan which requires additionally the payment of interest, carrying charges, down payment, or premiums for credit life insurance, the fact that such costs are to be added to the advertised price must be clearly disclosed. If monthly payments are quoted, the duration of the payments must be disclosed. Additionally, if terminal payments significantly larger than the advertised monthly payments are required, this fact must also be clearly disclosed as well as the amount thereof.

(e) A seller shall not procure the signature of purchasers on negotiable promissory notes without revealing to such purchasers they are signing a negotiable promissory note which may be discounted and also revealing the amount, terms, and conditions of such instrument.

(f) If an interest rate is quoted in advertising, it must be simple interest per annum calculated on the basis of the unpaid balance due as reduced after crediting installments as paid. [Guide 5]

§ 230.6 Bait advertising.

(a) An advertiser shall not offer a home for sale unless such offer is made in good faith for the purpose of selling the advertised home. Insincere offers to sell, made for the purpose of contacting prospective purchasers and switching them to a home other than the home advertised, shall not be used.

(b) Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception.

NOTE: The Guides Against Bait Advertising furnish specific guidance in regard to bait practices and are to be considered as supplementing this section. [Guide 6]

§ 230.7 Guarantees.

In general, any guarantee in advertising shall clearly and conspicuously disclose:

(a) The nature and extent of the guarantee. This includes disclosure of:

(1) What product or part of the product is guaranteed,

(2) What characteristics or properties of the designated product or part thereof are covered by, or excluded from, the guarantee,

(3) What is the duration of the guarantee,

(4) What, if anything, any one claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee, such as return of the product and payment of service or labor charges; and

(b) The manner in which the guarantor will perform. This consists primarily of a statement of exactly what the guarantor undertakes to do under the guarantee. Examples of this would be repair, replacement or refund. If the guarantor or the person receiving the guarantee has an option as to what may satisfy the guarantee this should be set out; and

(c) The identity of the guarantor. The identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. Confusion of purchasers often occurs when it is not clear whether the manufacturer or the builder is the guarantor.

NOTE: The Guides Against Deceptive Advertising of Guarantees furnish guidance respecting other guarantee representations and are to be considered as supplementing this section. [Guide 7]

§ 230.8 Model homes.

An advertiser shall not claim that a prospective buyer has been "selected" or that his home will be used as a "model" or "demonstration," or that the owner thereof will receive any amount of money, a reduction in price or other thing of value conditioned upon the sale of similar homes to others, unless such representation is factually true. [Guide 8]

§ 230.9 Delivery and installation.

(a) Advertised or quoted prices shall include all charges for delivery and installation of the home, unless the advertisement clearly and conspicuously discloses that delivery or installation charges are not included.

(b) Representations that a home will be delivered or installed within a specified period of time shall not be used unless factually true. [Guide 9]

PART 231—GUIDES FOR SHOE CONTENT LABELING AND ADVERTISING

AUTHORITY: The provisions of this Part 231 issued under secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

Subpart A—Labeling

§ 231.1 Labeling in general.

(a) (1) The term "leather" and other terms suggestive of leather may be unqualifiedly used in the labeling of shoes and slippers only when the shoes or slippers are composed in all substantial parts of top grain leather, exclusive of heels, stiffenings and ornamentation.

(2) If a shoe or slipper is composed in substantial part of leather, such terms may be used if immediately qualified to show clearly what part or parts are of leather, provided the other requirements of this part are met and provided further that no reference to leather content shall be so emphasized as to exaggerate or otherwise deceptively represent the quantity, quality or extent of leather present.

(3) The unqualified term "leather" and other terms suggestive of leather may not be used to describe shoes and slippers or parts thereof made from split leather or from ground, pulverized or shredded leather. The term may be used if qualified so as to provide an accurate, nondeceptive description of the split leather or the ground, pulverized or shredded leather content.

(b) In the labeling of shoes and slippers, no trade name, coined name, trade-mark, depiction, symbol, or other words or terms may be used, which would tend to convey the impression that the shoes or slippers are made of a certain kind or type of material when they are not.

(c) Examples of words and terms prohibited by this section, when applied to nonleather material are:

"Duraleather."
"Barkhyde."

(d) All labeling disclosures required by this Subpart A must be in the form of stamps, tags or labels imbedded in or attached to the product itself and so affixed as to remain thereon until completion of the sale to the retail customer. The disclosures required need not be in a single location or on the same stamp, tag or label, but they must all be easily and readily observed and understood upon casual inspection of the shoes or slippers. [Guide 1]

§ 231.2 Simulated or imitation leather.

Shoes or slippers composed either wholly, or in any part other than heels, of visible, or partly visible, nonleather material having the appearance of leather, or split leather, must bear labeling which clearly identifies the part or parts so composed and which clearly discloses either:

(a) The material is simulated or imitation leather, or

(b) The general nature of the material in such manner as will show it is not leather or split leather.

(c) Examples of disclosures which will meet the requirements of this section, when justified by the facts, are:

"Outersole, innersole and linings composed of imitation leather," or "imitation leather shoeboard."
"Midsoles composed of cellulose fibres," or "cellulose fibre shoeboard."
"Sock lining, quarter lining and heel pad are imitation leather made from ground leather fibres."
"Vinyl linings."

(d) A disclosure that will not meet the requirements of this section is:

"Shoeboard innersole."

[Guide 2]

§ 231.3 Concealed innersoles.

(a) Shoes or slippers containing innersoles of nonleather material which are concealed from view, but which also contain other visible parts of leather, must bear a label clearly disclosing the presence of the nonleather innersole.

(b) Examples of disclosures which will meet the requirements of this section are:

"Innersole of nonleather shoeboard."
"Innersole of cellulose fibre" or "cellulose fibre shoeboard."
"Innersole of rubberized felt."

(c) A disclosure which will not meet the requirements of this section is:

"Shoeboard Innersole."

[Guide 3]

§ 231.4 Split leather.

(a) Shoes or slippers composed either wholly or in part of visible split leather which simulates top grain leather must bear a label clearly disclosing the material is split leather and clearly identifying the part or parts to which the disclosure applies. (Leather made from portions of hides or skins which have been split into two or more thicknesses, other than the grain or hair side, shall be considered split leather.)

(b) Example of disclosures which will meet the requirement of this section is:

"Upper composed of split cowhide."

[Guide 4]

§ 231.5 Embossed or processed leather.

(a) Shoes or slippers composed either wholly or in part of visible leather which has been embossed, dyed, or otherwise processed, so as to simulate the appearance of a different kind or type of leather, must bear a label clearly disclosing the kind or type of leather of which they are actually made.

(b) If representations as to the leather appearance of the shoes or slippers are made, the label must reveal the simulated or imitation nature of the visible surface, and the disclosure as to the true composition of the material must be set forth in immediate conjunction with such representations.

Example. "Simulated alligator made of split cowhide."

[Guide 5]

§ 231.6 Ground or shredded leather.

Shoes or slippers, composed either wholly or in part of visible ground, pulverized or shredded leather that has the appearance of being leather must bear a label clearly identifying the part or parts involved and clearly disclosing either:

(a) The material is simulated or imitation leather, or

(b) The material is of ground, pulverized or shredded leather. [Guide 6]

Subpart B—Advertising

§ 231.7 Disclosures in advertising.

(a) Whenever a shoe or slipper is visually depicted in advertising, including catalogs, with sufficient clarity so that the picturization itself would have a tendency to create the impression that pictorially visible nonleather parts exclusive of heels are composed of leather or split leather or that pictorially visible leather parts exclusive of heels are composed of a different kind or type of leather than is the case, the advertising must contain a statement clearly and conspicuously disclosing either:

(1) The visible part or parts are simulated or imitation leather, or

(2) The general nature of the visible part or parts in such manner as will show they are not leather or not the type of leather depicted.

Example. An advertisement contains a picture of a shoe in sufficient detail as to lead a casual reader to expect the upper and linings were composed of leather. This advertisement must disclose the true composition of these parts or disclose that they are imitation leather.

(b) The term "leather" and other terms suggestive of leather may be unqualifiedly used in advertising of shoes and slippers only when the shoes or slippers are composed in all substantial parts of top grain leather, exclusive of heels, stiffenings and ornamentation.

(1) If a shoe or slipper is composed in substantial part of leather, such terms may be used in advertising if immediately qualified to show clearly what part or parts are of leather, provided no reference to leather content shall be so emphasized as to exaggerate or otherwise deceptively represent the quantity, quality or extent of leather present.

(2) The unqualified term "leather" and other terms suggestive of leather may not be used to describe shoes and slippers or parts thereof made from split leather or from ground, pulverized or shredded leather. The term may be used if qualified so as to provide an accurate, nondeceptive description of the split leather or the ground, pulverized or shredded leather content.

(3) Terms suggestive of leather may be used to describe the appearance of a nonleather material which has the appearance of leather if immediately accompanied by a disclosure that the term refers only to the appearance and that the material is not leather.

Example. "Imitation Alligator."

(c) In the advertising of shoes and slippers, no trade name, coined name, trade-mark, depiction, symbol, or other words or terms may be used which would tend to convey the impression that the shoes or slippers advertised are made of a certain kind or type of material when they are not.

(d) Examples of words and terms prohibited by this section, when applied to nonleather material are:

"Duraleather."
"Barkhyde."

[Guide 7]

PART 232—GUIDES FOR ADVERTISING RADIATION MONITORING INSTRUMENTS

AUTHORITY: The provisions of this Part 232 issued under secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 232.0 Application.

This part is applicable to the advertising of instruments, devices or other products which are represented in any manner to be of use to the general public for detecting or measuring fallout radiation. All forms of advertising, labeling and other promotional material, however, disseminated, are within the scope of this part.

§ 232.0–1 Explanation of terms.

As used in this part:

(a) "Gamma radiation" refers to the high energy radiation which would be given off by radioactive fallout particles and would present the major radiation hazard for the first few weeks after a nuclear attack;

(b) "Roentgen" refers to the standard unit of measure for the amount (dose) of gamma radiation exposure;

(c) "Dosimeter" refers to an instrument or device designed to measure the accumulated amount (total dose) of gamma radiation to which an individual or area has been exposed during the period of measurement;

(d) "Rate meter" refers to an instrument or device designed to measure the intensity (dose rate) of gamma radiation existing at the time and place of measurement;

(e) "Official OCD Criteria" refers to the "Criteria for Radiation Instruments for Use by the General Public" [1] as published by the Office of Civil Defense, Department of Defense, Washington, D.C. 20301.

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[1] Copies of the "Criteria for Radiation Instruments for Use by the General Public" are available upon request from the Office of Civil Defense, Department of Defense, Washington, D.C. 20301.

§ 232.1 Products adequate for home civil defense use.

(a) A product should not be represented, directly or by implication, as providing an adequate means whereby families or individual users may detect or measure radiation resulting from a nuclear attack, unless the product meets the Official OCD Criteria in all material respects.

(b) The following are some examples of products which would fail, in material respects, to meet the Official OCD Criteria:

Example 1. A rate meter which will not measure (indicate quantitatively) gamma radiation dose rates from 1 to at least 100 roentgens per hour and give positive indication when the dose rate is between 100 roentgens per hour and 1,000 roentgens per hour;

Example 2. A dosimeter which will not measure (indicate quantitatively) accumulated doses of gamma radiation:

a. From zero to at least 600 roentgens, or

b. From zero to at least 200 roentgens (when provision is made for resetting the instrument's indicator back to zero to permit further use);

Example 3. A rate meter which will not provide a measure of gamma radiation within an over-all accuracy of plus or minus 35 percent of the true gamma radiation intensity (dose rate);

Example 4. A dosimeter which will not measure gamma radiation within an over-all accuracy of plus or minus 25 percent of the true accumulated amount (total dose) of gamma radiation;

Example 5. An instrument, the operation of which would be materially affected by temperature changes, habitable altitudes, high humidity and other climatic and weather conditions, or by prolonged periods of storage;

Example 6. An instrument or device which would require the user to evaluate the radiation dose or dose rate by nothing more than his interpretation of variations in tone, brightness, loudness, color or photographic densities.

[Guide I]

§ 232.2 Products of limited home civil defense use—affirmative disclosures of limitations.

A product which does not meet the official OCD criteria in all material respects, but which would be of some significant use in detecting and measuring fallout radiation, should not be represented, directly or by implication, as providing any means whereby members of the general public could detect or measure radiation resulting from a nuclear attack, unless all advertising, labeling and promotional material used therefor clearly and conspicuously disclose all material respects in which the product fails to meet the official OCD criteria. [Guide II]

§ 232.3 Representations for toys, novelties, etc.

Products which cannot be relied on to serve a significant purpose in detecting and measuring radiation after a nuclear attack, should not be advertised or labeled in any manner which would convey the impression that the product would fulfill any such home civil defense need. [Guide III]

§ 232.4 **Representations for professional monitoring instruments.**

Professional, industrial, laboratory and other types of products designed for specialized radiation monitoring, but which would not be of practical use for some significant home civil defense need, should not be represented in any manner that would convey the impression that the product would be useful for home civil defense purposes. [Guide IV]

§ 232.5 **Representations requiring qualifications.**

(a) Representations which are susceptible of more than one interpretation, one or more of which would be misleading, should be qualified to remove the deceptive implications.

Example 1. Claims implying that radiation monitoring instruments provide "protection" from fallout radiation are misleading because such instruments only detect and measure radiation. Shelter is required for protection against radiation hazards. Therefore, any statement implying that monitoring instruments afford protection, such as, "Help Protect the Family," should be properly qualified.

Example 2. Such representations as "Detect and Measure Radiation" should be qualified so as to make it clear that the advertised product would be adequate for measuring only dose rates or only total doses of gamma radiation, as the case may be, unless the product adequately provides for making both types of measurements.

(b) Representations which cannot be qualified without the qualification amounting to a contradiction should not be used.

Example 1. Representations such as "100 percent Accurate" and "Fully Accurate," or any other expressions implying that an instrument would be completely accurate under all possible conditions of use, should not be used unless true in fact, because any qualification would amount to a contradiction.

Example 2. If a product does not include an adequate dosimeter and an adequate rate meter it should not be represented as a "Complete Family Kit," because any qualification of that claim, or one of similar meaning, would necessarily contradict the implication that a family would need nothing more than the kit to satisfy its basic radiation monitoring needs.

(c) Qualifications or disclosures should be made clearly and conspicuously in close conjunction with any representation which makes the qualification or disclosure necessary, and should have sufficient prominence to be observed by casual readers. Qualifications and disclosures should not be deceptively de-emphasized through use of small print, asterisks, footnotes or by any other means. [Guide V]

§ 232.6 **Government approval or endorsement.**

If a product meets the official OCD criteria, the advertiser may reveal this fact in advertising. However, even though the product meets such criteria, an advertiser should not represent in any manner that the product is being offered by, or has been approved, accepted, recommended or otherwise endorsed by the Government or any agency thereof. Thus, representations, pictures, seals, insignia, trade or brand names, or any other term or symbol which would imply any Government connection, approval or any other form of governmental endorsement, should not be used. [Guide VI]

§ 232.7 **Performance claims and other representations.**

No representation should be made, in any manner, which would mislead prospective purchasers concerning:

(a) A product's manner of performance, capabilities, reliability, utility, durability, or shock-resistant or moisture-resistant properties; or

(b) The ease or simplicity with which a product may be operated, interpreted, calibrated, tested, repaired or maintained. [Guide VII]

NOTE: The Federal Trade Commission's Guides Against Deceptive Pricing and Guides Against Deceptive Advertising of Guarantees furnish guidance respecting price and guarantee representations.

PART 233—GUIDES AGAINST DECEPTIVE PRICING

Sec.
233.1 Former price comparisons.
233.2 Retail price comparisons; comparable value comparisons.
233.3 Advertising retail prices which have been established or suggested by manufacturers (or other nonretail distributors).
233.4 Bargain offers based upon the purchase of other merchandise.
233.5 Miscellaneous price comparisons.

AUTHORITY: The provisions of this Part 233 issued under secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 233.1 **Former price comparisons.**

(a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious—for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction—the "bargain" being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the "reduced" price is, in reality, probably just the seller's regular price.

(b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith—and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based. And the advertiser should scrupulously avoid any implication that a former price is a selling, not an asking price (for example, by use of such language as, "Formerly sold at $______"), unless substantial sales at that price were actually made.

(c) The following is an example of a price comparison based on a fictitious former price. John Doe is a retailer of Brand X fountain pens, which cost him $5 each. His usual markup is 50 percent over cost; that is, his regular retail price is $7.50. In order subsequently to offer an unusual "bargain", Doe begins offering Brand X at $10 per pen. He realizes that he will be able to sell no, or very few, pens at this inflated price. But he doesn't care, for he maintains that price for only a few days. Then he "cuts" the price to its usual level—$7.50—and advertises: "Terrific Bargain: X Pens, Were $10, Now Only $7.50!" This is obviously a false claim. The advertised "bargain" is not genuine.

(d) Other illustrations of fictitious price comparisons could be given. An advertiser might use a price at which he never offered the article at all; he might feature a price which was not used in the regular course of business, or which was not used in the recent past but at some remote period in the past, without making disclosure of that fact; he might use a price that was not openly offered to the public, or that was not maintained for a reasonable length of time, but was immediately reduced.

(e) If the former price is set forth in the advertisement, whether accompanied or not by descriptive terminology such as "Regularly," "Usually," "Formerly," etc., the advertiser should make certain that the former price is not a fictitious one. If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states, "Sale," the advertiser must take care that the amount of reduction is not so insignificant as to be meaningless. It should be sufficiently large that the consumer, if he knew what it was, would believe that a genuine bargain or saving was being offered. An advertiser who claims that an item has been "Reduced to $9.99," when the former price was $10, is misleading the consumer, who will understand the claim to mean that a much greater, and not merely nominal, reduction was being offered. [Guide I]

§ 233.2 **Retail price comparisons; comparable value comparisons.**

(a) Another commonly used form of bargain advertising is to offer goods at prices lower than those being charged by others for the same merchandise in the advertiser's trade area (the area in which he does business). This may be done either on a temporary or a permanent basis, but in either case the advertised higher price must be based upon fact, and not be fictitious or misleading. Whenever an advertiser represents that he is selling below the prices being charged in his area for a particular article, he should be reasonably certain that the higher price he advertises does not appreciably exceed the price at which substantial sales of the article are being made in the area—that is, a sufficient number of sales so that a consumer would consider a reduction from the price to represent a genuine bargain or saving. Expressed another way, if a number of the principal retail outlets in the area are regularly selling Brand X fountain pens at $10, it is not dishonest for retailer Doe to advertise: "Brand X Pens, Price Elsewhere $10, Our Price $7.50".

(b) The following example, however, illustrates a misleading use of this advertising technique. Retailer Doe advertises Brand X pens as having a "Retail Value $15.00, My Price $7.50," when the fact is that only a few small suburban outlets in the area charge $15. All of the larger outlets located in and around the main shopping areas charge $7.50, or slightly more or less. The advertisement here would be deceptive, since the price charged by the small suburban outlets would have no real significance to Doe's customers, to whom the advertisement of "Retail Value $15.00" would suggest a prevailing, and not merely an isolated and unrepresentative, price in the area in which they shop.

(c) A closely related form of bargain advertising is to offer a reduction from the prices being charged either by the advertiser or by others in the advertiser's trade area for other merchandise of like grade and quality—in other words, comparable or competing merchandise—to that being advertised. Such advertising can serve a useful and legitimate purpose when it is made clear to the consumer that a comparison is being made with other merchandise and the other merchandise is, in fact, of essentially similar quality and obtainable in the area. The advertiser should, however, be reasonably certain, just as in the case of comparisons involving the same merchandise, that the price advertised as being the price of comparable merchandise does not exceed the price at which such merchandise is being offered by representative retail outlets in the area. For example, retailer Doe advertises Brand X pen as having "Comparable Value $15.00". Unless a reasonable number of the principal outlets in the area are offering Brand Y, an essentially similar pen, for that price, this advertisement would be deceptive. [Guide II]

§ 233.3 Advertising retail prices which have been established or suggested by manufacturers (or other nonretail distributors).

(a) Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer.

(b) There are many methods by which manufacturers' suggested retail or list prices are advertised: large scale (often nationwide) mass-media advertising by the manufacturer himself; preticketing by the manufacturer; direct mail advertising; distribution of promotional material or price lists designed for display to the public. The mechanics used are not of the essence. This part is concerned with any means employed for placing such prices before the consuming public.

(c) There would be little problem of deception in this area if all products were invariably sold at the retail price set by the manufacturer. However, the widespread failure to observe manufacturers' suggested or list prices, and the advent of retail discounting on a wide scale, have seriously undermined the dependability of list prices as indicators of the exact prices at which articles are in fact generally sold at retail. Changing competitive conditions have created a more acute problem of deception than may have existed previously. Today, only in the rare case are all sales of an article at the manufacturer's suggested retail or list price.

(d) But this does not mean that all list prices are fictitious and all offers of reductions from list, therefore, deceptive. Typically, a list price is a price at which articles are sold, if not everywhere, then at least in the principal retail outlets which do not conduct their business on a discount basis. It will not be deemed fictitious if it is the price at which substantial (that is, not isolated or insignificant) sales are made in the advertiser's trade area (the area in which he does business). Conversely, if the list price is significantly in excess of the highest price at which substantial sales in the trade area are made, there is a clear and serious danger of the consumer being misled by an advertised reduction from this price.

(e) This general principle applies whether the advertiser is a national or regional manufacturer (or other non-retail distributor), a mail-order or catalog distributor who deals directly with the consuming public, or a local retailer. But certain differences in the responsibility of these various types of businessmen should be noted. A retailer competing in a local area has at least a general knowledge of the prices being charged in his area. Therefore, before advertising a manufacturer's list price as a basis for comparison with his own lower price, the retailer should ascertain whether the list price is in fact the price regularly charged by principal outlets in his area.

(f) In other words, a retailer who advertises a manufacturer's or distributor's suggested retail price should be careful to avoid creating a false impression that he is offering a reduction from the price at which the product is generally sold in his trade area. If a number of the principal retail outlets in the area are regularly engaged in making sales at the manufacturer's suggested price, that price may be used in advertising by one who is selling at a lower price. If, however, the list price is being followed only by, for example, small suburban stores, house-to-house canvassers, and credit houses, accounting for only an insubstantial volume of sales in the area, advertising of the list price would be deceptive.

(g) On the other hand, a manufacturer or other distributor who does business on a large regional or national scale cannot be required to police or investigate in detail the prevailing prices of his articles throughout so large a trade area. If he advertises or disseminates a list or preticketed price in good faith (i.e., as an honest estimate of the actual retail price) which does not appreciably exceed the highest price at which substantial sales are made in his trade area, he will not be chargeable with having engaged in a deceptive practice. Consider the following example:

(h) Manufacturer Roe, who makes Brand X pens and sells them throughout the United States, advertises his pen in a national magazine as having a "Suggested Retail Price $10," a price determined on the basis of a market survey. In a substantial number of representative communities, the principal retail outlets are selling the product at this price in the regular course of business and in substantial volume. Roe would not be considered to have advertised a fictitious "suggested retail price." If retailer Doe does business in one of these communities, he would not be guilty of a deceptive practice by advertising, "Brand X Pens, Manufacturer's Suggested Retail Price, $10, Our Price, $7.50."

(i) It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an accommodation to particular retailers who intend to use such prices as the basis for advertising fictitious price reductions. [Guide III]

§ 233.4 Bargain offers based upon the purchase of other merchandise.

(a) Frequently, advertisers choose to offer bargains in the form of additional merchandise to be given a customer on the condition that he purchase a particular article at the price usually offered by the advertiser. The forms which such offers may take are numerous and varied, yet all have essentially the same purpose and effect. Representative of the language frequently employed in such offers are "Free," "Buy One—Get One Free," "2-For-1 Sale," "Half Price Sale," "1¢ Sale," "50% Off," etc. Literally, of course, the seller is not offering anything "free" (i.e., an unconditional gift), or ½ free, or for only 1¢, when he makes such an offer, since the purchaser is required to purchase an article in order to receive the "free" or "1¢" item. It is important, therefore, that where such a form of offer is used, care be taken not to mislead the consumer.

(b) Where the seller, in making such an offer, increases his regular price of the article required to be bought, or decreases the quantity and quality of that article, or otherwise attaches strings (other than the basic condition that the article be purchased in order for the purchaser to be entitled to the "free" or "1¢" additional merchandise) to the offer, the consumer may be deceived.

(c) Accordingly, whenever a "free," "2-for-1," "half price sale," "1¢ sale," "50% off" or similar type of offer is made, all the terms and conditions of the offer should be made clear at the outset. [Guide IV]

§ 233.5 Miscellaneous price comparisons.

The practices covered in the provisions set forth above represent the most frequently employed forms of bargain advertising. However, there are many variations which appear from time to time and which are, in the main, controlled by the same general principles. For example, retailers should not advertise a retail price as a "wholesale" price. They should not represent that they are selling at "factory" prices when they are not selling at the prices paid by those purchasing directly from the manufacturer. They should not offer seconds or imperfect or irregular merchandise at a reduced price without disclosing that the higher comparative price refers to the price of the merchandise if perfect. They should not offer an advance sale under circumstances where they do not in good faith expect to increase the price at a later date, or make a "limited" offer which, in fact, is not limited. In all of these situations, as well as in others too numerous to mention, advertisers should make certain that the bargain offer is genuine and truthful. Doing so will serve their own interest as well as that of the public. [Guide V]

PART 234—GUIDES FOR THE MAIL ORDER INSURANCE INDUSTRY

AUTHORITY: The provisions of this Part 234 issued under secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 234.0 Definitions.

(a) "Advertisement" for the purpose of this part, shall mean any of the following material when used in connection with solicitation of the original purchase of a policy, or renewal or reinstatement thereof:

(1) Any printed or published material, descriptive literature, statements or depictions of an insurer used in newspapers, magazines, radio and TV scripts or presentations, billboards, and similar displays, and

(2) Descriptive literature and sales aids of all kinds issued or caused to be issued by an insurer or by an insurer's agent or broker for presentation to members of the public, including, but not limited to, circulars, leaflets, booklets, depictions, illustrations, form letters, and policy forms.

(b) "Policy" for the purpose of this part, shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides insurance benefits for any kind of loss or expense.

(c) "Insurer" for the purpose of this part, shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, and any other legal entity, engaged in the advertisement and sale of a policy as herein defined.

§ 234.1 Deception (general).

No advertisement shall be used which because of words, phrases, statements or illustrations therein or information omitted therefrom has the capacity and tendency to mislead or deceive purchasers or prospective purchasers, irrespective of whether a policy advertised is made available to an insured prior to the consummation of the sale, or an offer is made of a premium refund if a purchaser is not satisfied. Words or phrases which are misleading or deceptive because the meaning thereof is not clear, or is clear only to persons familiar with insurance terminology, shall not be used. [Guide 1]

§ 234.2 Advertisement of benefits, losses covered or premiums payable.

(a) *Disclosure as to exceptions, reductions and limitations.* (1) No advertisement shall refer to any loss covered or benefit provided by an insurance policy, period of time for which any benefit is payable, or the cost of a policy, without clearly and conspicuously disclosing in close conjunction therewith such exceptions, reductions and limitations relating thereto as will fully relieve the advertisement of all capacity to deceive.

(2) The disclosure requirements of this section are not applicable to advertisements which mention only the general kind of insurance (e.g., "Life," "Accident," "Hospitalization"), give no information as to losses covered, benefits or premiums, and serve the purpose of merely inviting inquiries or a show of interest on the part of the recipients.

(3) As used in this section:

(i) The term "exception" means any provision in a policy whereby coverage for a specified hazard is entirely eliminated. It is a statement of risk not assumed under the policy.

(ii) The term "reduction" shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction clause not been used.

(iii) The term "limitation" means any provision which restricts the duration or extent of coverage, losses covered, or benefits payable under the policy other than an exception or a reduction.

(4) *Waiting, elimination, probationary or similar periods:* When there is a time period between the effective date of a policy and the effective date of coverage under the policy, or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, such fact must be clearly and conspicuously disclosed in close conjunction with any reference to such coverage or benefits made in any advertisement.

(5) *Benefits contingent on conditions:* When a policy pays varying amounts of benefits for the same loss occurring under different conditions or which pays benefits only when a loss occurs under certain conditions, any reference to such benefits in an advertisement must be closely accompanied by clear and conspicuous disclosure of such different or limited conditions as are applicable.

(6) *Preexisting conditions:* If a policy provides any limitations on the coverage of a loss if the cause of such loss is traceable to a condition existing prior to the effective date of the policy, or prior to any other particular time, any reference to the policy coverage of the loss made in any advertisement must be closely accompanied by clear and conspicuous disclosure of such limitations. (See also § 234.3.)

(7) *Deceptive words or phrases:* (i) No words, terms or phrases shall be used as descriptive of the coverage provided by a policy which misrepresent the extent of such coverage. Words such as "all," "full," "complete," "unlimited," and words of similar import must not be used to refer to any coverage which under the terms of the policy is subject to exceptions, reductions or limitations. Other words, terms, or phrases representing or implying broad insurance coverage must not be used as descriptive of losses covered or benefits provided by a policy which are subject to exceptions, reductions or limitations without disclosure of the applicable exceptions, reductions or limitations as required by this paragraph (a).

(ii) The terms "hospitalization," "accident," or "life" must not be used as descriptive of an insurance policy which provides benefits for only unusual or unique sicknesses, accidents, or causes of death unless in close conjunction with such terms clear and conspicuous disclosure is made of such coverage (e.g. "Leukemia Hospitalization," "Death by Drowning").

(iii) Words or phrases such as "up to," "as high as," etc. shall not be used as descriptive of the dollar amount payable for any kind of represented losses or expenses unless the policy provides benefit payments up to such amount in all cases for such losses or expenses actually sustained by a policyholder, or there is full and conspicuous disclosure in close conjunction with such words or phrases of either—

(a) the complete schedule of payments provided by the policy, or

(b) the specific loss or expense for which the represented dollar amount is provided by the policy; and also disclosure that benefits provided by the policy for losses or expenses of the kind represented vary in amount depending on the particular kind of loss or expense incurred, if such is the case, as for example—"Policy provides surgical benefits which vary in amount depending on kind of operation performed. For example, pays up to $150 for operation to remove a lung."

and there is also disclosure of such other exceptions, reductions or limitations as required by this paragraph (a).

(iv) An advertisement must not contain representations such as "This policy pays $1,800 for hospital room and board expenses" without clear and conspicuous disclosure in close conjunction therewith of the maximum daily benefit and the maximum time limit for such hospital room and board expense.

(v) An advertisement must not represent the weekly, monthly, or other periodic benefits payable under a policy without clearly and conspicuously disclosing in close conjunction with such representation the limitation of time over which such benefits will be paid or of the number of payments or total amount thereof which will be made if, by the terms of the policy, payment of benefits for any loss or aggregate of losses is limited to time, number, or total amount.

(8) *Age limitation:* Any reference in an advertisement to any insurance coverage or benefits which by the terms of the policy are limited to a certain age group must be closely accompanied by clear and conspicuous disclosure of such fact.

(b) *Deception as to coverage and additional benefits.* (1) A policy covering only one disease or certain specified diseases must not be advertised in such manner as to imply coverage beyond the terms of the policy, either by use of synonymous words or terms to refer to any disease or physical conditions so as to imply broader coverage, or by other means.

(2) An advertisement must not represent, directly or indirectly, that a policy provides for the payment of certain benefits in addition to other benefits when such is not the fact. [Guide 2]

§ 234.3 Health of the applicant or insured.

No advertisement shall be used which represents or implies—

(a) That the condition of the applicant's or insured's health prior to, or at the time of issuance of a policy, or thereafter, will not be considered by the insurer in determining its liability or benefits to be furnished for or in the settlement of a claim when such is not the fact (see also § 234.2(a)(6); or

(b) That no medical examination is required if the furnishing of benefits by an insurer under a policy so represented is or may be contingent on a medical examination under any condition; or

(c) That no medical examination is required, even though such is the case, without conspicuously disclosing in close conjunction therewith all the conditions pertaining to or involving the insured's health under which the insurer is not liable for the furnishing of benefits under a policy. [Guide 3]

§ 234.4 Disclosure of policy provisions relating to renewability, cancellability, or termination.

(a) No advertisement shall refer, directly or by implication, to renewability, cancellability, or termination of a policy or a policy benefit, or contain any statement or illustration of time or age in connection with any benefit payable, loss, eligibility of applicants, or continuation of a policy, unless in close conjunction with such reference, statement or illustration there is clear and conspicuous disclosure of the material provisions in the policy relating thereto.

(b) No advertisement shall represent or imply that an insurance policy may be continued in effect indefinitely or for any period of time, when, in fact, said policy provides that it may not be renewed or may be canceled by the insurer, or terminated under any circumstances over which insured has no control, during the period of time represented. [Guide 4]

§ 234.5 Testimonials, appraisals or analyses.

No testimonial, appraisal or analysis shall be used in any advertisement which is not genuine, does not represent the current opinion of the author, does not accurately describe the facts, does not correctly reflect the present practices of an insurer, is not applicable to the policy or insurer advertised or is not accurately reproduced.

NOTE: An insurer makes as his own all statements contained in any testimonial which he uses in his advertisement, and the advertisement including such statements is subject to all of the provisions of this part.

[Guide 5]

§ 234.6 Deceptive use of statistics.

(a) No advertisement shall be used in which representations are made as to the time within which claims are paid, the dollar amounts of claims paid, the number of claims paid or the number of persons insured under a particular policy or otherwise, or which contains other statistical information relating to any insurer or policy, unless such advertisement accurately reflects all the relevant facts. The advertisement shall not imply that the statistics are derived from a policy advertised unless such is the fact.

(b) No advertisement shall be used which misrepresents that claim settlements by an insurer are liberal or generous beyond the terms of a policy. [Guide 6]

§ 234.7 Identification of plan or number of policies.

(a) No advertisement shall offer a choice of the amount of benefits without clearly and conspicuously disclosing that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of benefits.

(b) No advertisement shall refer to various benefits which may be contained in two or more policies, other than group master policies, without clearly and conspicuously disclosing that such benefits are provided only through a combination of such policies. [Guide 7]

§ 234.8 Deception as to introductory, initial or special offers.

No representation shall be made in an advertisement, directly or by implication, that a policy or combination of policies is an introductory, initial, special or limited offer and that applicants will receive advantages not available at a later date, unless such is the fact. [Guide 8]

§ 234.9 Misrepresentation as to licensing, approval or endorsement of insurer, policy or advertisement.

No advertisement shall represent directly or by implication—

(a) That an insurer, or any policy or advertisement thereof, has been licensed, approved, endorsed or recommended by any governmental agency or department, unless such is the fact;

(b) That an insurer, or a policy or an advertisement thereof, has been approved, endorsed or recommended by any individual, group of individuals, society, association, or other organization, unless such is the fact. [Guide 9]

§ 234.10 Deception as to "group" or "quasi-group" policies.

No advertisement shall represent, directly or indirectly, that prospective policyholders become group or quasi-group members and as such enjoy special rates or underwriting privileges ordinarily associated with group insurance as recognized in the industry, unless such is the fact. [Guide 10]

§ 234.11 Allocation of benefits under a "Family Group" policy.

No advertisement shall refer to a benefit payable under a "Family Group" policy when the full amount of such benefit is not payable upon the death or disability, etc. of only one member of the family unless clear and conspicuous disclosure of such fact is made in the advertisement. [Guide 11]

§ 234.12 Deceptive use of trade names, service marks, etc.

There shall not be used in an advertisement any trade name, service mark, slogan, symbol, or other device which has the capacity and tendency to mislead or deceive prospective purchasers as to the true identity of the insurer or its relation with public or private institutions. [Guide 12]

§ 234.13 Disparagement.

No advertisement shall be used which, directly or indirectly, falsely disparages competitors, their policies, services, or business methods. [Guide 13]

§ 234.14 Misrepresentation concerning the insurer.

No advertisement shall be used which, directly or by implication, has the capacity and tendency to mislead or deceive prospective purchasers with respect to an insurer's assets, corporate structure, financial standing, age, or relative position in the insurance business, or in any other material respect. [Guide 14]

PART 235—GUIDES AGAINST DECEPTIVE LABELING AND ADVERTISING OF ADHESIVE COMPOSITIONS

AUTHORITY: The provisions of this Part 235 issued under secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 235.1 Metal composition products.

Products which do not, after application, have the same physical and chemical properties of metal, or of a particular represented metal, shall not be represented as metal or as having the intrinsic characteristics of metal, or of the particular metal indicated. Thus, neither the term "metal" nor the terms "iron," "steel," "aluminum" or other names of metal shall be used to designate in brand names or otherwise any product of the kind herein described. While this section does not prohibit truthful representations in advertising and labeling of the percentage of content of any metallic substances in such products (e.g., contains 20 percent powdered aluminum) it does prohibit with respect thereto the use of representations such as, but not limited to, the following:

"Plastic Steel."
"Dries to steel."
"Hardens into metal."
"Steel in paste form."
"Liquid aluminum."
"Instant aluminum."
"Real metallic putty."
"Fluid Steel."

[Guide 1]

§ 235.2 Use of the term "solder" or "weld."

Products which, when used, do not form a metallic seal or bond, shall not be represented as solders or as welding products unless it is clearly disclosed in connection therewith that they are nonmetallic, as for example, "Plastic Solder" or "Plastic Weld." A "solder" or "weld" product which is nonmetallic shall not be represented as producing a metallic seal or bond. This section does not prohibit an accurate representation of the percentage of metallic substance contained in a product. [Guide 2]

§ 235.3 Use of the word "porcelain."

(a) The word "porcelain" shall not be used to designate in brand names or otherwise any product which, after application, does not possess all of the chemical and physical properties of porcelain. Under this section products of the type herein described shall not be represented as being, among other things:

"Porcelain."
"Porcelain Glaze."
"Liquid Porcelain."
"Porcelain in Paste Form."
"Plastic Porcelain."
"Porcelain restorer."
"Porcelain renewer."

(b) This section does not prohibit truthful representations of the actual percentage of porcelain contained in an industry product as, for example,

"Contains 25% powdered porcelain."

[Guide 3]

§ 235.4 Epoxy adhesives.

(a) No product shall be represented as being an epoxy adhesive unless the epoxy component thereof is derived from an epoxide or oxirane which, when applied in use, chemically reacts with a hardener or curing agent to form a substantially infusible and insoluble bond.

(b) No product containing an epoxy shall be represented as having the characteristics and capabilities of an epoxy adhesive, where the epoxy component present in the product is in an amount not sufficient to produce the characteristics and capabilities represented.

(c) No representation shall be made that the epoxy component in an industry product is present to produce the characteristics and capabilities of an epoxy adhesive where such component is not productive of such characteristics and capabilities, but is present for a different purpose and use. [Guide 4]

§ 235.5 Use of the word "rubber," etc.

(a) The word "rubber" or other words denominating rubber shall not be used to designate, in brand names or otherwise, any product which, after application, does not possess the essential characteristics of rubber. Under this section such a product shall not be represented as, for example, "Rubber," "Plastic Rubber," "Liquid Rubber," etc.

(b) This section does not prohibit truthful representation of the actual percentage of rubber contained in a product. [Guide 5]

§ 235.6 Misrepresentation (general).

(a) No representation shall be made in any manner respecting any adhesive products to which this part is applicable which is likely to mislead or deceive purchasers as to their nature, composition, characteristics, uses, effectiveness, capabilities, durability, toughness, hardness, adhesive strength, lasting effect, thermal or electrical properties, resistance to water, steam, gas, or chemicals, or in any other material respect.

(b) Among the representations prohibited by this section are the following:

(1) Representations that a product will seal, repair or mend "anything" when, in fact, there are certain materials which it cannot seal, repair or mend.

(2) Representations that a product is proof against or will withstand any specified temperature when in fact the product is adversely affected in any way when subjected to such temperature for any period of time.

(3) Representations that a product will effect permanent repairs if, in fact, the repairs made by use of the product will not last as long as the product so repaired.

(4) Representations that a product makes any product like new if it does not actually restore the part thereof repaired to its original new condition. [Guide 6]

§ 235.7 Guarantees, warranties, etc.

Industry members shall not represent in advertising or otherwise that a product is "guaranteed" without a clear and conspicuous disclosure in close conjunction with such representation of:

(a) The nature and extent of the guarantee; and

(b) Any material conditions or limitations in the guarantee which are imposed by the guarantor; and

(c) The manner in which the guarantor will perform thereunder; and

(d) The identity of the guarantor.

NOTE: The Commission's April 26, 1960 Guides Against Deceptive Advertising of Guarantees (25 F.R. 3772) furnish additional guidance respecting guarantee representations and are to be considered as supplementing this section. Copies are available upon request.

[Guide 7]

§ 235.8 Placing deceptive material in the hands of others.

Manufacturers and distributors shall not place in the hands of wholesalers, jobbers, retailers, or others, promotional material by or through which they may deceive or mislead the purchasing and consuming public concerning any product. [Guide 8]

PART 236—GUIDE FOR AVOIDING DECEPTIVE USE OF WORD "MILL" IN THE TEXTILE INDUSTRY

AUTHORITY: The provisions of this Part 236 issued under secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 236.1 General rule.

Simply stated, the general rule is that the word "mill" should not be used in the corporate, business, or trade name of any person or concern handling textiles, or in any other manner, unless the person or concern actually owns and operates or directly and absolutely controls the manufacturing facility in which all textile materials which are sold under that name are produced.

§ 236.2 The requirement of operational control.

(a) For a firm to qualify as a bona fide mill it must exercise direct and absolute control over the milling facility in which its merchandise is produced. Contracting to have milling operations performed by others will not qualify one as a mill.

(b) A distributor who furnishes yarns and other materials to a knitting mill for manufacture into garments according to the distributor's specifications is not a mill because it does not exercise direct and absolute operational control over the milling operations. A firm having a written "lease" with a mill whereby the mill allocated five of its looms and the workers at such looms to manufacture ribbon for the jobber from materials supplied by, and according to instructions from, the jobber is not a mill for the same reason. Even if a jobber takes the entire output of a mill, he does not thereby become a mill.

§ 236.3 Examples of deceptive usage of the word "mill."

Illustrative situations in which use of "mill" in designating trade status has been found to be deceptive are the following:

(a) A corporation which purchased unfinished silk and rayon cloth from weavers or manufacturers, caused such cloth to be dyed, printed, or processed into finished dry goods by others and sold such goods to retailers, members of the cutting up trade and others;

(b) A tailor who made made-to-measure suits but did not produce the cloth from which the suits were made;

(c) A selling agent who represented a number of suit fabric manufacturers;

(d) An independent retailer who claimed to be a "mill's outlet."

§ 236.4 Exception to general rule.

(a) Under the exceptional circumstances set forth below, the Commission may permit a nonmanufacturing concern to continue to use the word "mill" in its trade name provided that it is accompanied by a qualifying phrase which clearly states that the concern is not a mill and does not own or operate a facility which manufactures textiles. This exception only applies if:

(1) The name of the concern has become a valuable business asset and its loss would result in a substantial hardship; and

(2) The qualifying phrase will eliminate all possibility of deception.

(b) Factors to be taken into consideration in determining whether a trade name has become a valuable business asset the loss of which would become a hardship are as follows:

(1) Extent and period of time during which the name has been used;

(2) Funds and efforts expended in establishing and promoting the name;

(3) The extent of the goodwill enjoyed by the company;

(4) The adverse effect on the company that could reasonably be expected if use of the word "mill" had to be discontinued.

PART 237—GUIDES AGAINST DEBT COLLECTION DECEPTION

AUTHORITY: The provisions of this Part 237 issued under secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 237.0 Definitions of terms as used in these guides in this part.

(a) "Industry Member" shall mean any person, firm, partnership, corporation, organization, association and any other legal entity engaged in the practice of collecting or attempting to collect any and all kinds of money debts for itself or others, or any person, firm, partnership, corporation, organization, association, or any other legal entity which places in the hands of others through sale or otherwise, or distributes for itself or others, any kind of material used or to be used in connection with collecting or attempting to collect such debts or seeking information concerning debtors, commonly called skip-tracing.

(b) "Debt" shall mean money which is due or alleged to be due from one to another.

(c) "Debtor" shall mean one who owes or is alleged to owe a money debt.

(d) "Creditor" shall mean one to whom a money debt is due or is alleged to be due.

(e) "Credit Bureau"—any person, firm, partnership, corporation, organization, association, or any other legal entity engaged in gathering, recording, and disseminating favorable as well as unfavorable information relative to the credit worthiness, financial responsibility, paying habits and character of individuals, firms, corporations, and any other legal entity being considered for credit extension, so that a prospective creditor may be able to make a sound decision in the extension of credit.

(f) "Collection Agency"—any person, firm, partnership, corporation, organization, association, and any other legal entity which collects money debts for others.

§ 237.1 Deception (general).

An industry member shall not use any deceptive representation or deceptive means to collect or attempt to collect debts or to obtain information concerning debtors.

NOTE: The Commission has found that in the collection of debts some industry members either disguise the purpose for which information is desired or hold out an inducement to debtors to furnish information which is not in their interest to supply and which they normally would not voluntarily furnish. In connection with the collection or attempted collection of debts or the seeking of information concerning debtors, the Commission has prohibited, among others, the following misrepresentations:

1. That an industry member was seeking information in connection with a survey.

2. That an industry member is in the business of a casting service for the motion picture or television industry.

3. That an industry member has a prepaid package for the debtor.

4. That a sum of money or valuable gift will be sent to the addressee if the required information is furnished.

5. That accounts have been turned over to innocent purchasers for value.

6. That debts have been turned over to an attorney or an independent organization engaged in the business of collecting past-due accounts.

7. That documents are legal process forms.

[Guide 1]

§ 237.2 Disclosure of purpose.

(a) An industry member shall not use or cause to be used in his behalf in connection with the collection of or the attempt to collect a debt or in connection with obtaining or attempting to obtain information concerning a debtor, any forms, letters, questionnaires, or other material printed or written which do not clearly and conspicuously disclose that such are used for the purpose of collecting or attempting to collect a debt or to obtain or attempt to obtain information concerning a debtor, when the communication suggests that its objective is other than to collect a debt or to obtain information concerning a debtor. (This affirmative disclosure also applies to all forms of communication, oral or otherwise.)

(b) An industry member shall not, through sale or otherwise, place in the hands of others for use in connection with the collection of or attempt to collect a debt or in connection with obtaining or attempting to obtain information concerning a debtor, any forms, letters, questionnaires or other material printed or written which do not clearly and conspicuously reveal thereon that such are used for the purpose of collecting or attempting to collect a debt or to obtain or attempt to obtain information concerning a debtor, when the communication suggests that its objective is other than to collect a debt or to obtain information concerning a debtor. [Guide 2]

§ 237.3 Government affiliation.

An industry member shall not use any trade name, address, insignia, picture, emblem, or any other means which creates a false impression that such industry member is connected with or is an agency of government. [Guide 3]

§ 237.4 Organizational titles.

An industry member shall not use the term "Credit Bureau" or any other term of similar import or meaning in its corporate or trade name, or in any other manner, when such member is not in fact a "Credit Bureau" as defined in this part. [Guide 4]

§ 237.5 Trade status.

In collecting or attempting to collect debts due him, an industry member shall not, through the use of any designation or by any other means, create the impression that he is a collection agency, unless he is such as defined in this part. [Guide 5]

§ 237.6 Services.

In the solicitation of accounts for collection or for ascertainment of credit status, an industry member shall not directly, or by implication, misrepresent the services he renders.

NOTE: § 237.6 is general in nature since the varied misrepresentations used in connection with the solicitation of accounts for collection are numerous. Listed below are a few specific examples of representations which have been prohibited by the Commission because they were false or deceptive:

1. That the industry member's organization is separated into functional divisions, such as credit reporting, analytical, tracing, and collecting.

2. That the industry member employs local representatives, regional investigators, and lawyers on his personnel staff in various States and throughout the world.

3. That collection fees are less than what the industry member actually charges.

4. That no charges will be made for accounts unless they are collected.

5. That the industry member makes personal calls on debtors to collect accounts.

6. That the industry member will furnish credit reports to parties who assign accounts to him for collection.

[Guide 6]

Dated: November 7, 1967.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67-13198; Filed, Nov. 7, 1967; 8:47 a.m.]

PART 17—APPLICATION AND DEFINITIONS

Application of Guides and Trade Practice Rules in Preventing Unlawful Competitive Restraints

Section 17.1 has been amended to read as follows:

§ 17.1 Application of guides and trade practice rules in preventing unlawful competitive restraints.

(a) Industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry. Failure to comply with the guides may result in corrective action by the Commission under applicable statutory provisions. Guides may relate to a practice common to many industries or to specific practices of a particular industry.

(b) Trade practice rules promulgated by the Commission are designed to foster and promote the maintenance of fair competitive conditions in the interest of protecting industry, trade, and the public. It is to this end, and to the exclusion of any act or practice which suppresses competition, restrains trade, fixes or controls price through combination or agreement, or which otherwise injures, destroys, or prevents competition, that the rules are to be applied.

(Sec. 6(g), 38 Stat. 722; 15 U.S.C. 46(g))

Issued: November 7, 1967.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67-13197; Filed, Nov. 7, 1967; 8:47 a.m.]

PART 238—GUIDES AGAINST BAIT ADVERTISING

The following guides were adopted by the Federal Trade Commission on November 24, 1959, for the use of its staff in the evaluation of bait advertising[1] and related switch practices. While the guides do not purport to be all inclusive, they enumerate the major indications of bait and switch schemes. They were released to the public in the interest of consumer education and to obtain voluntary, simultaneous, and prompt cooperation by those whose practices are subject to the jurisdiction of the Federal Trade Commission.

Adversary actions against those who [F.R. Doc. 67-13199; Filed, Nov. 7, 1967; engage in bait advertising and whose practices are subject to Commission jurisdiction, are brought under the Federal Trade Commission Act (15 U.S.C. secs. 41-58). Section 5 of the Act declares unlawful, "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce."

AUTHORITY: The provisions of this Part 238 issued under Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 238.0 Bait advertising defined.[1]

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.

§ 238.1 Bait advertisement.

No advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product. (Guide 1.)

[1] For the purpose of this part "advertising" includes any form of public notice however disseminated or utilized.

§ 238.2 Initial offer.

(a) No statement or illustration should be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, the purchaser may be switched from the advertised product to another.

(b) Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception. (Guide 2.)

§ 238.3 Discouragement of purchase of advertised merchandise.

No act or practice should be engaged in by an advertiser to discourage the purchase of the advertised merchandise as part of a bait scheme to sell other merchandise. Among acts or practices which will be considered in determining if an advertisement is a bona fide offer are:

(a) The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer,

(b) The disparagement by acts or words of the advertised product or the disparagement of the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with it,

(c) The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the merchandise is available only at designated outlets,

(d) The refusal to take orders for the advertised merchandise to be delivered within a reasonable period of time,

(e) The showing or demonstrating of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement,

(f) Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product. (Guide 3.)

§ 238.4 Switch after sale.

No practice should be pursued by an advertiser, in the event of sale of the advertised product, of "unselling" with the intent and purpose of selling other merchandise in its stead. Among acts or practices which will be considered in determining if the initial sale was in good faith, and not a strategem to sell other merchandise, are:

(a) Accepting a deposit for the advertised product, then switching the purchaser to a higher-priced product,

(b) Failure to make delivery of the advertised product within a reasonable time or to make a refund,

(c) Disparagement by acts or words of the advertised product, or the disparagement of the guarantee, credit terms, availability of service, repairs, or in any other respect, in connection with it.