

through February 28, 1978, will amount to \$911,000.

It is further found that good cause exists for not postponing the effective date until 30 days after publication in the *FEDERAL REGISTER* (5 U.S.C. 553) as (1) notice of these proposed rules were published in the *FEDERAL REGISTER* and no comments were received; (2) the committees need to promptly meet certain financial obligations incurred under the provisions of these marketing orders which are in excess of currently authorized expenditures; and (3) no increase in the assessment rate is necessary as income will be adequate to cover the increased expenditures.

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

Dated: January 11, 1978.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-1238 Filed 1-16-78; 8:45 am]

[3410-02]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Amdt. 1]

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment relieves on January 15 and 22, 1978, the Sunday packaging prohibition. Recent rains in California production areas have reduced winter lettuce harvests. This will promote orderly marketing by allowing the south Texas industry additional operating time to satisfy larger lettuce orders.

EFFECTIVE DATE: January 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 144 and Marketing Order No. 971 regulate the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. This program is effective under the Agricultural Marketing Agreement

Act of 1937, as amended (7 U.S.C. 601-674).

The amendment is based upon recommendations made January 11, 1978, by the South Texas Lettuce Committee, which was established under the order and is responsible for its local administration. It is hereby found that the amendment which follows will tend to effectuate the declared policy of the act.

It is further found that it is impractical and contrary to the public interest to give preliminary notice, or to engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the *FEDERAL REGISTER* (5 U.S.C. 553) in that: (1) This amendment must become effective immediately if producers are to derive any benefits from it, (2) compliance with this amendment will not require any special preparation on the part of handlers, and (3) this amendment relieves restrictions on the handling of lettuce grown in the production area.

Regulation, as amended.

In § 971.318 (42 FR 59373) the introductory paragraph is hereby amended by adding the following to it:

§ 971.318 Handling regulation.

***, except that the prohibition against the packing of lettuce on Sundays shall not apply on January 15 and 22, 1978.

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

Effective date: Dated January 12, 1978, to become effective January 15, 1978.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-1290 Filed 1-16-78; 8:45 am]

[7590-01]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 30—RULES OF GENERAL APPLICABILITY TO LICENSING OF BYPRODUCT MATERIAL

Exemption of Persons Using Spark Gap Irradiators Containing Cobalt-60

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is exempting from licensing and regulatory requirements persons using nuclear material near the spark gap of oil furnaces to prevent ignition problems. The exemption, re-

quested by Ray Burner Co., does not apply to the manufacture or import of the spark gap irradiators. The exemption covers the use of the spark gap irradiators in electrically ignited fuel oil burners having a firing rate of at least 3 gallons per hour (11.4 liters per hour).

EFFECTIVE DATE: February 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Jim Henry, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-443-6910.

SUPPLEMENTARY INFORMATION:

By letter dated May 18, 1973, the Ray Burner Co. of San Francisco, Calif., filed a petition for rule making (PRM 30-54) with the Atomic Energy Commission requesting an exemption from licensing requirements for spark gap irradiators containing not more than 1 microcurie of cobalt-60 in plated or alloy form. This notice of rule making responds to the request of Ray Burner Co.

BACKGROUND

On October 24, 1975, the Nuclear Regulatory Commission published in the *FEDERAL REGISTER* (40 FR 49801) a proposed amendment of its regulation 10 CFR Part 30 which would exempt from licensing and regulatory requirements the receipt, possession, use, transfer, export, ownership, and acquisition of spark gap irradiators containing not more than 1 microcurie of cobalt-60 per spark gap irradiator for use in electrically ignited fuel oil burners.

All interested persons were invited to submit written comments and suggestions for consideration in connection with the proposed amendment and a draft environmental impact statement by December 8, 1975. After consideration of the comments and other factors involved, the Commission has adopted the amendment. The text of the amendment set out below differs from the text of the proposed amendment published October 24, 1975, by excluding from the exemption the use of spark gap irradiators in oil burners having a firing rate of not more than 3 gallons per hour (11.4 liters per hour).

DISCUSSION OF COMMENTS

Two commentators observed that the exemption as proposed did not specifically prohibit use of the spark gap irradiators in domestic oil burners and therefore the potential market is quite large. In the notice published October 24, 1975, the Commission stated (40 FR 49801) that in typical applications, the spark gap irradiators are used in boilers, power plants, and

other heavy duty equipment, but not in private home furnaces or internal combustion engines.

The Commission's statement was based on the engineering characteristics of small oil burners (3 gallons per hour maximum main flame input) and their associated safety control timing (90 seconds maximum flame establishing period). A spark delay of more than 90 seconds would be indicative of permanent arc failure (or other malfunction) rather than temporary arc failure attributable to the statistical time lag between impressment of voltage and formation of a spark in an igniter. Because the time lag is statistical, there is a possibility that the delay may be several seconds, but the probability of the delay being 90 seconds or longer is extremely remote.

Based on these factors, there is neither a need nor a market for spark gap irradiators in small automatically fired warm-air furnaces, small floor mounted unit heaters, and similar appliances used in private homes and commercial and industrial establishments. This conclusion is recognized by changing the text of § 30.15(a)(10) to exclude from the exemption the use of spark gap irradiators in oil burners having a firing rate of not more than 3 gallons per hour (11.4 liters per hour). The exemption does not preclude the use of spark gap irradiators in private home oil burners if they have a firing rate greater than 3 gallons per hour (11.4 liters per hour).

DISCUSSION OF FINAL RULE

The Commission has found that exemption from licensing requirements for the receipt, possession, use, transfer, export, ownership, and acquisition of spark gap irradiators containing not more than 1 microcurie of cobalt-60 under the conditions set forth below will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

The exemption does not apply to the manufacture or import for sale or distribution of the spark gap irradiators. Criteria for the issuance of a specific license to conduct such activities and quality control and reporting requirements are set forth in §§ 32.14, 32.15, 32.16, and 32.110 of 10 CFR Part 32, "Specific Licenses to Manufacture, Distribute, or Import Certain Items Containing Byproduct Material." Prototype tests for spark gap irradiators containing cobalt-60 are not specified in the regulation. Applicants for specific licenses are required by § 32.14(b)(4) to submit procedures for and results of prototype tests. The Nuclear Regulatory Commission will either approve the tests or require submission of acceptable tests to demonstrate that the material will not become detached from the product

and that the byproduct material will not be released to the environment under the most severe conditions likely to be encountered in normal use of the product. The testing requirements will be incorporated into the specific license.

The amendment, in effect, makes the manufacturer or importer responsible for providing an approved product for use in electrically ignited fuel oil burners. The requirement for use in electrically ignited fuel oil burners will be met prior to the transfer of the product for use under § 30.15 by conditioning each specific license issued to the manufacturer or importer with the requirement of incorporating a spark gap irradiator containing not more than 1 microcurie of cobalt-60 in either an electrically ignited fuel oil burner or a container labeled with instructions for installation in such a burner. In addition, the manufacturer or importer will be authorized to transfer these spark gap irradiators to a person holding a specific license provided such specific license contains similar transfer conditions to meet the end use requirements of the exemption. The subsequent possession, use, and disposal by all other persons will be exempt from licensing and regulatory requirements of the Commission.

Under the provisions of § 150.15(a)(6) of 10 CFR Part 150, "Exemptions and Continued Regulatory Authority in Agreement States Under Section 274," the transfer of possession or control by persons in Agreement States who manufacture, process, or produce spark gap irradiators containing cobalt-60 for use by exempt persons are subject to the Commission's licensing and regulatory requirements, even though the spark gap irradiators are manufactured under an Agreement State license. Such manufacturers, processors, or producers wishing to transfer possession or control of spark gap irradiators containing cobalt-60 for use by exempt persons will be required to obtain a specific license issued by the Commission under § 32.14 of 10 CFR Part 32.

AVAILABILITY OF FINAL ENVIRONMENTAL STATEMENT

Pursuant to the National Environmental Policy Act of 1969, and the Commission's regulations in 10 CFR Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," the Commission's Office of Standards Development has prepared a final environmental impact statement in connection with this action to amend Part 30 of the Commission's regulations. The statement is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. In about two weeks after publication of this notice in the *FEDER-*

AL REGISTER, copies of the statement will be available as NUREG-0319 from the National Technical Information Service, Springfield, Va. 22161. The price will be \$6.00 for paper copy and \$3.00 for microfiche.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and sections 552 and 553 of title 5 of the United States Code, the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 30 is published as a document subject to codification.

Section 30.15 of 10 CFR Part 30 is amended by adding a new paragraph (a)(10) to read as follows:

§ 30.15 Certain items containing byproduct material.

(a) Except for persons who apply byproduct material to, or persons who incorporate byproduct material into, the following products, or persons who import for sale or distribution the following products containing byproduct material, any person is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in Parts 20 and 30-36 of this chapter to the extent that such person receives, possesses, uses, transfers, exports, owns, or acquires the following products:

(10) Spark gap irradiators containing not more than 1 microcurie of cobalt-60 per spark gap irradiator for use in electrically ignited fuel oil burners having a firing rate of at least 3 gallons per hour (11.4 liters per hour).

(Secs. 81, 161, Pub. L. 83-703, 68 Stat. 935, 948 (42 U.S.C. 2111, 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841).)

Dated at Washington, D.C., this 11th day of January 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-1173 Filed 1-16-78; 8:45 am]

[6320-01]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

PART 371—ADVANCE BOOKING CHARTERS

PART 372a—TRAVEL GROUP CHARTERS

PART 378—INCLUSIVE TOUR CHARTERS

PART 378a—ONE-STOP-INCLUSIVE TOUR CHARTER

Interpretations

AGENCY: Civil Aeronautics Board.

ACTION: Interpretation of existing rules: 14 CFR 371.27, 371.28, 372a.22, 372a.24, 378.12, 378.13, 378a.27, 378a.28.

SUMMARY: This interpretive notice informs certificated air carriers and indirect air carriers that the Board will no longer accept passenger charter prospectuses that name more than one origination or destination point, unless the solicitation materials clearly inform the public of the true nature of the arrangements the charter operator has made with the direct air carrier. The Board is acting on its own initiative, because of its concern that so-called "area filings" are misleading the public as to the actual origins or destinations of charter flights.

DATES: Issued: January 4, 1978; effective: February 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Patricia T. Szrom, Supplementary Services Division, Bureau of Operating Rights, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428, 202-673-5088.

SUPPLEMENTARY INFORMATION: The following letter was sent to certificated air carriers and indirect air carriers of passengers on January 4, 1978.

Subject: Interpretation of the Board's Special Regulations affecting "area" charter filings.

So-called "area" charter filings have become a source of increasing problems for charter participants. Area filings are a marketing concept first permitted in a limited context by Order E-26578, dated March 27, 1968, and Order E-26682, dated April 18, 1968. In these orders, the Board adopted a policy under which a tour operator could file a tour prospectus listing one or more cities over a broad area of the United States as the possible point of origin for a particular tour. This procedure was adopted to eliminate the need for operators to file minor amendments changing the point of departure, and thus to alleviate an administrative burden on the operator and the Board. In our opinion this policy is now being abused.

When the Board adopted these orders, its intention was to alleviate the problems faced by tour operators who market their programs by soliciting organizations rather than individuals. At the present time, however, a tour operator who files an "area-origination" program is often soliciting individuals from numerous cities at the same time, stating dates and prices, and giving the impression that the tour will originate from all of the cities listed, when, in reality, there is only one flight leaving from only one of the various cities. The other cities are dropped, sometimes at the last moment, and unsuspecting tour participants find their vacation plans disrupted.

A similar problem sometimes occurs with "area-destination" filings. Some tour operators have filed prospectuses naming several cities as possible destinations for the tour. For example, the tour operator might contract with a carrier for a plane to leave from New York and fly to either Rome, London, or Paris, depending on the response received for each destination. The solicitation material, however, indicates that on each date shown, there will be a tour landing in each of the cities listed, when in reality, there is to be only one flight going to only one city.

In our view, this growing practice goes far beyond the limited intent of the Board's previously pronounced policy, and can be permitted to continue only so long as the solicitation materials fully and fairly disclose to prospective participants the actual number of flights that will be operated. Therefore, effective 30 days from the date of this announcement, it will be the policy of the Board to reject charter prospectuses naming two or more origination (or destination) points for any one charter unless the solicitation materials clearly disclose the true nature of the arrangements the operator has made with the direct air carrier with respect to departure (or destination) points. For such a filing to be acceptable, the tour operator must clearly state whether any one particular point has definitely been selected as a departure (or destination) city, or whether the plane is to depart from (or fly to) only one of a number of alternative cities. For example, if only one flight per date will actually be operated, the solicitation material must state that the charter will originate from only one of the various cities listed and indicate the city most likely to be chosen. If there is a provision in the charter contract for stop-overs to pick up other passengers, the solicitation material must state that the tour will originate from only one of the various cities listed, but may stop at others (the maximum number of stop-overs should be specified) to enplane or deplane passengers. Failure of the advertising materials and operator/participant contract to disclose accurately the operator's arrangements for the itinerary of the charter will be regarded by the Board as a violation of the Special Regulations as they pertain to the filing of charter prospectuses (§§ 371.28, 372a.22, 378.13, and 378a.28) as well as a violation of the unfair and deceptive practices provisions (§§ 371.27, 372a.24, 378.12, 378a.27) of those regulations, and will therefore be grounds for rejection of such filings.

If you have any questions on this interpretation, please contact the Supplementary Services Division, Bureau of Operating Rights.

For the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-1193 Filed 1-16-78; 8:45 am]

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 9059-0]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Trans World Accounts, Inc., et al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This order, among other things, requires a Santa Rosa, Calif. debt collection agency to cease misrepresenting the likelihood or imminency of legal action; and to cease using, or placing in the hands of others, materials which simulate telegraphic commu-

nications, or which may otherwise mislead debtor recipients as to the nature, import or urgency of such communications.

DATES: Complaint, September 30, 1975; Final order, October 25, 1977.¹

FOR FURTHER INFORMATION CONTACT:

William A. Arbitman, Director, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, Calif. 94102, 415-556-1270.

SUPPLEMENTARY INFORMATION: In the Matter of Trans World Accounts, Inc., a corporation, and Floyd T. Watkins, individually and as an officer of said corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart-Coercing and Intimidating: § 13.356 Delinquent debtors. Subpart-Enforcing Dealings or Payments Wrongfully: § 13.1045 Enforcing dealings or payments wrongfully.

Subpart-Furnishing Means and Instrumentalities of Misrepresentation or Deception: § 13.1055 Furnishing means and instrumentalities of misrepresentation and deception. Subpart-Misrepresenting Oneself and Goods—Business Status, Advantages or Connections; § 13.1370 Business methods, policies and practices. Subpart-Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1895 Scientific or other relevant facts. Subpart-Threatening Suits, Not in Good Faith: § 13.2264 Delinquent debt collection.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45).)

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

FINAL ORDER

This matter has been heard by the Commission upon the appeal of respondents' counsel from the initial decision and upon briefs and oral argument in support thereof and opposition thereto, and the Commission, for the reasons stated in the accompanying Opinion, has substantially denied the appeal.

It is ordered, That pages 1-42 of the initial decision of the administrative law judge are hereby adopted as the Findings of Fact and Conclusions of Law of the Commission.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying opinion.

¹Copies of the Complaint, Initial Decision, Opinion, Dissenting Statement by Commissioner Collier and the Final Order filed with the original document.

It is further ordered, That the following Order to Cease and Desist be hereby entered:

ORDER

It is ordered, That respondents, Trans World Accounts, Inc., a corporation, its successors and assigns, and its officers, and Floyd T. Watkins, individually and as an officer of said corporation, and respondents agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which by their appearance, content, or otherwise, misrepresent that they are telegrams or a telegram.
2. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which by simulating telegrams or other methods or forms or types of communication misrepresent the nature, import, or urgency of any communication.
3. Misrepresenting directly or by implication, that legal action with respect to an alleged delinquent debt has been, is about to be, or may be initiated, or otherwise misrepresenting in any manner the likelihood or imminency of legal action.
4. Placing in the hands of others the means and instrumentalities to accomplish any of the matters prohibited in this order, or which fail to comply with the requirements of this order.

It is further ordered, That the respondent corporation shall distribute a copy of this order to each of its operating divisions or departments and to each of its present and future officers, agents, representatives, or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts, and that said respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondent corporation notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation,

the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his employment with Trans World Accounts, Inc., and of his affiliation with a new business or employment. In addition, for a period of ten years from the effective date of this order, the individual respondent named herein shall promptly notify the Commission of his affiliation with a new business or employment whose principal activities include the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts, or of his affiliation with a new business or employment in which his own duties and responsibilities involve the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts. Such notice shall include individual respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That the respondents herein shall, within sixty (60) days from the date this order becomes final, and periodically thereafter as required by the Federal Trade Commission, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

By the Commission, Commissioner Collier dissenting.

CAROL M. THOMAS,
Secretary.

DISSENTING STATEMENT OF
COMMISSIONER COLLIER

In my opinion the record proof fails to support any reasonable interpretation that Trans World Accounts (TWA) threatened debtors with imminent and likely lawsuits. The challenged communications generally followed a two-part format. In the first part, TWA demanded immediate payment and sometimes demanded to be contacted by the debtor as an alternative to payment. In the second part TWA advised debtors (or suggested to them) that a failure to make the payment demanded "may" result in a lawsuit, sometimes an "immediate" one.

This record does not show that TWA's clients never brought lawsuits, "immediate" or otherwise. Three of the four of these clients who testified said either that they sued or that TWA sued for them. (Tr. 205-06, 210-12, 256.) The fourth client was not asked whether his employer sued. (Tr. 171-78.)

It cannot be discerned from this record, even in general terms, how much time elapsed between the sending of the letters that mentioned a lawsuit and the subsequent decision to sue. The majority concludes that a lawsuit is not "imminent" if it is not initiated during the letter series. I find no support in the record for placing this meaning on TWA's letters, and the record proof regarding clients' litigation policies is in disarray. The client witness who was asked the most probing questions about his firm's policy testified as follows:

Question (by complaint counsel): But if they—suppose a debtor has not responded at all after the first, second or third, would you let the series go to its conclusion?

Answer (by Mr. Anderson of Beckman Instruments): Yes. That's our policy.

Q. Then you would decide whether to bring a lawsuit; is that correct?

A. Yes, unless we heard through other sources, either from a salesman that goes by and sees them moving out of the building, or some evidence that would indicate that, "Hey, they're closing up." Then we'd stop the service and file suit. (Tr. 257)

This hardly proves that lawsuits were not brought before the series expired.²

What were the chances of a lawsuit when the challenged letters went out and afterwards? What were the determinants? Were they different between respondents' "commercial" and "non-commercial" clients? In all these matters, the Commission is asked to resolve silence against the respondents.³

²The same client earlier testified: "If *** the customer says, 'Well, look, there isn't any way that I can pay you because at the advice of counsel we're thinking seriously of filing bankruptcy, we have such a cash flow problem that we really don't know whether we're going to stay in business,' we'll stop the TWA service and immediately turn the account over to an attorney." (Tr. 250)

³Rather than on the testimony, which was inconclusive, complaint counsel may be relying on respondents' admission that certain communications mentioning the possibility of a lawsuit "were sent by Trans World Accounts, Inc. to debtors in instances where the creditor had not assigned the debts involved to Trans World Accounts, Inc. until after the final notice in the series had been sent." CX 40 at p. 6, CX 41c. This does not prove that TWA's clients did not bring suit during the series, assuming arguendo that

Footnote continued on next page.

If the communications had told debtors that the respondents or their clients would definitely sue, or even, that they would probably sue if payment were not made, complaint counsel might have proved its case. But the respondents were careful, to say only that a lawsuit "may" be brought.

In deciding for liability, the majority gives "may" a statistical meaning that runs against common usage. Although the majority purports to do this only for the sake of clarifying the order, it is clear that this statistical conception of "may" is the root of its finding of liability. The word "may" usually conveys uncertainty of a fairly elastic nature, and I think that it must have been understood in this way by the debtors who received the respondents' letters. So far as it is used to express volition, "may" conveys the absence of a present intention—certainly not the presence of one, as the majority suggests. Unlike the situations that we sometimes face where communications are hurled in staccato rhythm at partially attentive audiences of mass media, one can reasonably assume that readers of the morning mail will read and understand the common meaning of simple words.

The majority's decision effectively regulates the word "may" out of respondents' vocabulary, at least insofar as it can be used by them to express the possibility of a lawsuit. If respondents can establish that a debtor has a 51 percent chance of being sued, I do not see why they wouldn't say, "You will probably be sued" rather than "You may be sued." (Unless, of course, the majority also intends to establish a regulatory meaning for "probably" beyond what is commonly comprehended by that word.)

The public policy reasons that dictate this reworking of the English language are obscure to me. There is a public interest in consumers knowing that they may be sued, and possibly assessed costs, in time to head off the consequences.⁴ If the majority believes

that there will be time enough to locate debtors in a class that will probably be sued, I don't know the basis for that belief. A debtor may be more likely to have the means to pay a debt over a longer period of time than over a shorter one. I do not think we earn the gratitude of those consumers who will receive the shorter "notice periods" and quicker litigation decisions that the majority's language convention may inspire. Even if the long-term consequences of our language reform efforts are nil, as those who leave their debts unpaid learn not to trust the absence of mention of a lawsuit, there are bound to be some short-term costs of this reeducation process.

Having concluded that the text of the letters contains no misrepresentation, I believe that there is no public interest in entering and enforcing an order against respondents' practice of styling these communications "telegrams", "Trans-O-Grams" and the like.⁵

Clearly TWA would be permitted to call their communications telegrams if they had paid the price to Western Union. Western Union may—or may not—have a private right of action for TWA's conduct.⁶

In the ordinary trademark infringement case, the trademark holder's private right of action can protect the important interest that consumers have in getting what they have chosen, an interest that we also have a duty to protect. See *FTC v. Algoma Lumber Co.*, 291 U.S. 67 (1934); but see, *FTC v. Klesner*, 280 U.S. (1929). Here, however, the case is different. There is no question that TWA's clients got what they chose, and the recipients of these communications were not in a position to choose whether they were to receive a Trans World telegram (or

is less important when a suit is only possible.

⁴The reach of the majority's holding on this issue is unclear. The record, buttressed by our experience in reviewing marketing practices, indicates that (fill-in-the-blank)-O-Grams are often used in promotional activities, ranging from soliciting political campaign contributions to sales of products. RX 7-19.

⁵Mr. Michael Borsella, patent and trademark attorney for Western Union, seems to admit in his affidavit that "the word 'telegram' is a dictionary word in the public domain." He objects not to the use of the word "telegram" but to the use of that word "on a spurious telegraphic format together with a number of proprietary features ordinarily embodied in one or more of Western Union's formats." (Emphasis in original.) CX 43c. See, also CX 43d. While this objection may be more valid with regard to respondents' original "telegram" communication (CX 43e, CX 43f), it seems very weak with regard to the "Trans-O-Gram" format. See *Western Union Telegraph Co. v. ITT World Communications, Inc.*, 164 U.S.P.Q. 651 (Patent Office Trademark Trial and Appeal Board 1970) (editorial description).

Trans-O-Gram) or a Western Union telegram, because the recipients obviously were not buying the communications. The nature of the consumer injury in this case must be on a different plane than in the ordinary trademark infringement case. It is not apparent exactly what this consumer injury is. Surely it is not merely that respondents failed to pay Western Union.

The majority writes that respondents' practice of calling their communications telegrams is material, because "the obvious conclusion to be drawn from the receipt of a demand to pay, telegraphically communicated at substantial cost, is that precipitous action may follow if immediate response to the message is not made." Presumably this "immediate response" would be either payment of the debt or some communication by the debtor to the creditor.

There is no evidence on this record that shows that TWA's practice of styling its communications as "telegrams" induced consumers to pay their debts or communicate with their creditors. Two consumer affiants gave evidence of their impressions of respondents' communications.

Affiant Semien: "When my mother first showed me the billing notice, I thought it was a real telegram until I read it and realized it was a fake." (CX 44a)

Affiant Pere: "When I first received the collection notices, I thought they were real telegrams sent by Western Union." (CX 45a)

Both of these statements make clear to my mind that any misimpression was temporary and did not last long enough to induce payment or other prejudicial action by the debtor. A third consumer testified to the same effect:

Question (by respondents' counsel): [Y]ou received a Trans-O-Gram from Trans World Accounts?

Answer (by Mr. Doolittle): That's correct.

Q. And the first thing you wondered is whether it was something similar to a Mailgram?

A. That's correct.

Q. How long did that frame of mind exist?

A. Until I opened it. (Tr. 47-48)

On this evidence I am not willing to find as a matter of expertise that respondents' use of the telegram or Trans-O-Gram format was a "material" deception, even assuming that it was a deception at all. See *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965). At most, these symbols on the envelope may have led readers to be more attentive to the contents, but this ephemeral reaction is not the sort of public injury that I had thought Congress had charged the Commission with preventing.

Footnote continued from preceding page.

to be the relevant time period. Moreover, there was evidence and the ALJ found that "currently, TWA receives an assignment of the debt before the first letter is mailed in about 80-90 percent of all flat rate sales. I.D. 10. There was evidence that two years before trial this figure was 60 to 70 percent. (Tr. 70)

⁶A California statute, which governs a substantial part of respondents' operations, effectively conditions a debt collector's recovery of costs in municipal and justice courts upon his prior notice to the debtor that the debt collector "intended to commence legal action against the defendant and that legal action could result in a judgment against the defendant which would include the costs and necessary disbursements." Cal. Code Civ. Proc. § 1031 (Deering's An. Supp. 1977). Obviously, this is a consumer protection measure, and I do not see that the interest that it guarantees

The ALJ held that an incorrect "initial impression" is enough to make a violation, whether or not this initial misimpression induced any action.⁷ I.D. at 32-33.

The "first contact" cases that he cites do not go so far as to read the materiality requirement out of Section 5. In each, the initial misimpression induced or could have induced consumers to take some action to their prejudice, such as taking a trip to the store, *Carter Products, Inc. v. FTC*, 186 F. 2d 821, 824, (7th Cir. 1951), consenting to a deceptive sales presentation, *FTC v. Standard Education Society*, 302 U.S. 112, 115 (1937), or answering a deceptive offer of employment, *Progress Tailoring Co. v. FTC*, 153 F. 2d 103, 104-05 (7th Cir. 1946).

Because, in my view, the text of the letters were not proved false and the use of the telegram format did not cause material deception, I would dismiss the complaint.

I believe that this result is consistent with the soon-to-be-effective Fair Debt Collection Practices Act, Pub. L. 95-109, which will comprehensively regulate deception and unfairness in the debt collection industry.

There is nothing in the Act or in its legislative history to suggest that the general prohibitory sections⁸ set different standards for deception and unfairness than Section 5. Because I do not believe that respondents cognizably violated Section 5, I do not believe that they have violated these general sections.

Neither did the respondents violate the specific prohibitions of the Act. Section 807(5) prohibits "the threat to take any action that cannot legally be taken or is not intended to be taken." Nothing that the respondents said about the possibility of a lawsuit could reasonably be construed as a "threat", at least giving that term its plain meaning as Congress apparently intended.⁹

There are two specific provisions in the new Act that might be argued to

bar the "telegram" and "Trans-O-Gram" formats. Section 807(9) prohibits "the use or distribution of any written communication . . . which creates a false impression as to its source . . ." I do not believe that respondents misrepresented the "source" of their communications within the meaning of the Act. Even if a consumer thought a Trans World telegram were a Western Union telegram, he would not be mistaken as to the source, because Western Union is a medium of messages, not a source of them. (CX 43c) A consumer could not possibly doubt from any of the respondents' communications on this record that the source was TWA. Moreover, both the prohibitory language associated with the language quoted above¹⁰ and the Senate Report¹¹ make clear that the evil addressed by this provision is the practice of some debt collectors passing themselves off as government officials, attorneys or credit bureaus. There is no allegation of this kind of deception here.

The second specific provision that might be relevant to the respondents' practice of calling their communications telegrams and Trans-O-Grams is Section 808(8) which prohibits "using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business."

The interest protected by this provision is obviously the consumer's privacy from the awareness of others that he owes an uncollected debt. As the Senate Report explains, the section prohibits "using symbols on envelopes indicating that the contents pertain to debt collection." There would be little sense, from the perspective of avoiding deception, to read this section to permit use of the word "telegram" on the letter to the debtor and forbid it on the envelope.¹² Unless the respon-

dents' use of the telegram and Trans-O-Gram formats links in the public mind their communications to the business of debt collection, I do not see how their use offends this subsection. Moreover, since this subsection expressly permits debt collectors to send telegrams, I cannot see how TWA's conduct contravenes its policy.

The majority clearly interprets respondents' statements to mean something different than my interpretation of them. If this were a case of a merchant describing his products in language susceptible of misunderstanding, I might be inclined to take another view. In such a case we are entitled to infer injury from the mere fact of misunderstanding of a material aspect of the transaction. *FTC v. Algoma Lumber Co.*, 291 U.S. 67, 78 (1934). But here the injury is more remote: It is the possibility that a debtor might because of his misunderstanding pay an unjust debt. In my view, the respondents' proven conduct does not make this a substantial risk. In any event, the real risks of this injury are regulated far more effectively by the new Fair Debt Collection Practices Act than they will be by the majority's order.

[FR Doc. 78-1199 Filed 1-16-78; 8:45 am]

[8010-01]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5896, 34-14363, and IC-10089]

DEFINITIONS CONCERNING MULTIBANK COMMON TRUST FUNDS

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: These rules have the effect, provided certain conditions are met, of treating common trust funds for several banks in the same affiliated group ("multibank common trust funds") in the same manner as traditional single bank common trust funds which are ordinarily exempt from regulation as investment companies, and from the registration and reporting requirements normally applicable to publicly held companies and other issuers of securities. Some state laws permit multibank common trust funds, which under recent amendments to the federal tax laws may operate as nontaxable entities. In the absence of the rules now being adopted, multibank common trust funds might be treated differently under the Fed-

⁷The ALJ found that the telegram format may have actually induced one consumer to work out an installment payment program. I.D. at 33. I reject this finding. The consumer to whom the ALJ refers is affiant Semien whose statement quoted supra indicates that she was disabused of her initial misimpression as soon as she opened the envelope.

⁸Section 807 provides: "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." Section 808 provides: "A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt."

⁹The Act expressly prohibits the Commission from interpreting its terms through administrative regulations. Fair Debt Collection Practices Act, Section 814(d). See S. Rep. No. 95-382, 95th Cong., 1st Sess. 6

(1977) (hereinafter cited as "Senate Report"). This feature was stressed in the House debate. 123 Cong. Rec. H2921 (daily ed. April 4, 1977) (remarks of Rep. Annunzio); 123 Cong. Rec. H2928 (daily ed. April 4, 1977) (remarks of Rep. Evans).

¹⁰The subsection 807(9) reads in full: "The use or distribution of any written communications which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval."

¹¹Senate Report at 8.
¹²This reading of subsection 808(8) is reinforced by subsection 804(5) which governs collector communications to third parties (not the debtor) and forbids the use of identifying symbols on both the envelope and the letter.

eral securities laws from single bank common trust funds.

EFFECTIVE DATE: January 10, 1978.
FOR FURTHER INFORMATION CONTACT:

Lawrence R. Bardfield, Esq., Office of the Chief Counsel, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-376-8056.

SUPPLEMENTARY INFORMATION: Bank holding companies and representatives of the banking industry have recently indicated an interest in using "multibank common trust funds," i.e., common trust funds maintained by one constituent bank of a bank holding company for assets contributed thereto by the bank or by other constituent banks in the same holding company in their capacity as trustee, executor, administrator, or guardian. Some State laws allow such common trust funds, and recent Federal legislation permits such funds to be operated as nontaxable entities.¹

At present, common trust funds maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian, and interests or participations therein, are exempted or excluded from provisions of the federal securities laws by section 3(a)(2) (15 U.S.C. 77c(a)(2)) of the Securities Act of 1933 (15 U.S.C. 77a et seq.) ("Securities Act"), section 3(a)(12) (15 U.S.C. 78c(a)(12)) and rule 12h-2 (17 CFR 240.12h-2) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) ("Exchange Act"), and section 3(c)(3) (15 U.S.C. 80a-3(c)(3)) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) ("Investment Company Act").² Because the present definition of "common trust fund" in the Federal securities laws refers to a fund maintained by "a bank" for assets contributed to the fund by "such bank,"³ it appears that, as presently drafted, the exclusionary and exemptive provisions in the Federal securities laws would not be available if one bank in a bank holding company maintained a common trust fund which included assets contributed by other bank members of the same holding company.

On October 28, 1977 the Commission published in the FEDERAL REGISTER (42

FR 56754) proposed rules which would define the term "common trust fund" so as to include such multi-bank common trust funds, and thus have the effect of exempting them from the provisions of the Investment Company Act. Also, under those rules interests or participations therein would be exempt from the registration requirements in section 5 (15 U.S.C. 77e) of the Securities Act and section 12(g) of the Exchange Act (15 U.S.C. 78l(g)), and be "exempted securities" under section 3(a)(12) of the Exchange Act.

PUBLIC COMMENTS ON THE PROPOSED RULES

The comments received concerning the proposed rules unanimously favored their adoption, supporting the rules both in concept and substance.

COMMISSION ACTION

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations, general rules and regulations, Securities Act of 1933, is hereby amended by adding a new § 230.132 to read as follows:

§ 230.132 Definition of "common trust fund" as used in section 3(a)(2) of the Act.

The term "common trust fund" as used in section 3(a)(2) of the Act (15 U.S.C. 77c(a)(2)) shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the collective investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian, provided that:

(a) The common trust fund is operated in compliance with the same state and federal regulatory requirements as would apply if the bank maintaining such fund and any other contributing banks were the same entity; and

(b) The rights of persons for whose benefit a contributing bank acts as trustee, executor, administrator, or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group.

(15 U.S.C. 77s(a).)

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. Part 240 of Chapter II of Title 17 of the Code of Federal Regulations,

general rules and regulations, Securities Exchange Act of 1934, is hereby amended:

By revising paragraph (b) of § 240.12h-2 to read as follows:

§ 240.12h-2 Exemptions from registration under section 12(g) of the act.

(b) Any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian. For purposes of this paragraph (b), the term "common trust fund" shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian; *Provided, That:*

(1) The common trust fund is operated in compliance with the same state and federal regulatory requirements as would apply if the bank maintaining such fund and any other contributing banks were the same entity; and

(2) The rights of persons for whose benefit a contributing bank acts as trustee, executor, administrator or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group; and

(15 U.S.C. 78c(b), 78l.)

2. Part 240 of Chapter II of Title 17 of the Code of Federal Regulations, general rules and regulations, Securities Exchange Act of 1934, is hereby amended by adding a new § 240.3a12-6 to read as follows:

§ 240.3a12-6 Definition of "common trust fund" as used in section 3(a)(12) of the act.

The term "common trust fund" as used in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)) shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the collective investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian; *Provided, That:*

(a) The common trust fund is operated in compliance with the same state

¹Pub. L. No. 94-414, 90 Stat. 1273, amending 26 U.S.C. 584(a).

²These provisions apply only to common trust funds for assets contributed by a bank in a bona fide fiduciary capacity and incidental to the bank's traditional trust department activities.

³Section 3(c)(3) of the Investment Company Act uses the equivalent expression "the bank" instead of "such bank."

and federal regulatory requirements as would apply if the bank maintaining such fund and any other contributing banks were the same entity; and

(b) The rights of persons for whose benefit a contributing bank acts as trustee, executor, administrator, or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group.

(15 U.S.C. 78c(b).)

**PART 270—RULES AND REGULATIONS,
INVESTMENT COMPANY ACT OF 1940**

3. Part 270 of Chapter II of Title 17 of the Code of Federal Regulations, rules and regulations, Investment Company Act of 1940, is hereby amended by adding a new § 270.3c-4 to read as follows:

§ 270.3c-4 Definition of "common trust fund" as used in section 3(c)(3) of the Act.

The term "common trust fund" as used in section 3(c)(3) of the Act (15 U.S.C. 80a-3(c)(3)) shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the collective investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian; *Provided, That:*

(a) The common trust fund is operated in compliance with the same State and Federal regulatory requirements as would apply if the bank maintaining such fund and any other contributing banks were the same entity; and

(b) The rights of persons for whose benefit a contributing bank acts as trustee, executor, administrator, or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group.

(15 U.S.C. 80a-6(c), 80a-37(a).)

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 10, 1978.

[FR Doc. 78-1201 Filed 1-16-78; 8:45 am]

[1505-01]

Title 21—Food and Drugs

**CHAPTER 1—FOOD AND DRUG ADMINISTRATION,
DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE**

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION
[Docket No. 76F-0420]

**PART 176—INDIRECT FOOD ADDITIVES; PAPER
AND PAPERBOARD COMPONENTS**

**Components of Paper and Paperboard in
Contact With Aqueous and Fatty Foods**

Correction

In FR Doc. 77-36861 appearing at page 65150 in the issue for Friday, December 30, 1977, in the table for § 176.170(b)(2), in the second column, under "List of substances," in the second line, "...azona..." should have read "...azonia..."

[1505-01]

SUBCHAPTER D—DRUGS FOR HUMAN USE
[Docket No. 75N-0020]

PART 440—PENICILLIN ANTIBIOTIC DRUGS

Updating and Technical Revisions

Correction

In FR Doc. 77-33332 appearing at page 59852 in the issue for Tuesday, November 22, 1977:

1. The fourth line, first column, page 59858, should be designated as "d".

2. The eighth line, first column, page 59858, reading "d. By changing 'potassium hetacillin' should be deleted and 'e. By deleting the figures 'X 427.57' should be substituted therefor.

3. In the middle column, page 59858, the heading "§ 40.53a [Revoked]" should read "§ 440.53a [Revoked]".

4. In the fourth line of amendatory paragraph b. under "§ 440.119a [Amended]", third column, page 59861, "dicloxacillin" should read "dicloxacillin".

5. In the twelfth line of § 440.281b(a)(1), middle column, page 59872, "6.0" should read "90 per cent".

6. At the end of § 440.1081a(b)(3), third column, page 59873, "millimeter" should read "milliliter".

[4310-02]

Title 25—Indians

**CHAPTER 1—BUREAU OF INDIAN AFFAIRS,
DEPARTMENT OF THE INTERIOR**

SUBCHAPTER W—MISCELLANEOUS ACTIVITIES

PART 259—PREFERENCE IN EMPLOYMENT

Establishment of New Part

DECEMBER 28, 1977.

AGENCY: Bureau of Indian Affairs.

ACTION: Final rule.

SUMMARY: The Bureau is filing its final rule on Preference in Employment in order to establish a definition of the term "Indian" for preference in employment in the Bureau of Indian Affairs by adding a new Part 259 to Subchapter W, Miscellaneous Activities, of Chapter I, Title 25, Code of Federal Regulations. The new Part 259 was inadvertently published in the proposed rulemaking notice as Part 258. It is being established as Part 259.

EFFECTIVE DATE: February 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Louis Bayhille, Division of Personnel Management, telephone 202-343-5547.

SUPPLEMENTARY INFORMATION:

The principal author of the regulations in Part 259 is David E. Jones, Office of the Solicitor, telephone 202-343-9331. On May 31, 1977, the Bureau of Indian Affairs published a proposed rule (42 FR 27609 and 27610) adding a new part to its regulations to establish a definition of the term "Indian" for eligibility for a preference in employment in the Bureau of Indian Affairs. A 45 day period was allowed for comments.

Eight interested individuals and four tribal chairpersons responded to the proposed rulemaking. The staff from one Bureau Agency Office, one Bureau Area Office, and one each from the Central Office of the Bureau and the Indian Health Service, Department of Health, Education, and Welfare, also commented. In addition, a group of Bureau Central Office employees submitted comments and requested a hearing of record regarding their proposed amendments and inter-related matters. The hearing request is denied, since there has not been sufficient interest indicated to warrant a public hearing.

The explanatory statements in the notice of May 31, 1977, concerning § 259.1 (b) and (c) of the proposed rulemaking caused concern from three commentators.

The explanation in the notice concerning the descendancy criterion, § 259.1(b), was ambiguous and was not in accordance with the Associate Solicitor for Indian Affairs' opinion of March 24, 1976. It must be clarified that in order for a person to meet the criterion of § 259.1(b) the person must meet all three of the following criteria: (1) Be descended from a member of a tribe now under Federal jurisdiction; (2) have been born on or before June 1, 1934; and (3) have been residing within any Indian reservation on June 1, 1934.

The explanation given in the proposed rulemaking notice concerning

§ 259.1(c), according to one commentator, gave the impression that persons whose Indian ancestry was not of a Federally recognized tribe(s) could not include that ancestry in computing their quantum. The correct implication is that the criterion applies to persons whose ancestry is not of a Federally recognized tribe(s) as well as those whose ancestry is of a Federally recognized tribe(s).

Careful consideration was given to other comments received; however, it was determined that these comments were not significant or substantial enough to warrant changing, deleting, removing, or adding to the proposed rulemaking as published on May 31, 1977. Some of the recommendations pertained to the administrative application of the rules. Such suggestions will be incorporated in the revised issuance of 44 BIAM 302 which will outline the administrative procedures for implementation of the regulations.

Persons who are employed by the Bureau of Indian Affairs on the date these regulations become effective and who received preference in any previous appointment will continue to be preference eligibles so long as they are continuously employed.

The authority for the Assistant Secretary for Indian Affairs to issue these regulations is contained in Section 9 of the Act of June 30, 1834 (4 Stat. 737, 25 U.S.C. 43), Section 6 of the Act of May 17, 1882 (22 Stat. 88, 25 U.S.C. 46), Section 10 of the Act of August 15, 1894 (28 Stat. 313, 25 U.S.C. 44), Section 5 of the Act of February 8, 1887 (24 Stat. 389, 25 U.S.C. 348), and Sections 12 and 19 of the Act of June 18, 1934 (48 Stat. 986, 25 U.S.C. 472 and 479), and 230 DM 1 and 2.

25 CFR is amended to add a new Part 259 as follows:

- Sec.
259.1 Definitions.
259.2 Appointment actions.
259.3 Application procedure for preference eligibility.

AUTHORITY: 4 Stat. 737, 25 U.S.C. 43; 22 Stat. 88, 25 U.S.C. 46; 28 Stat. 313, 25 U.S.C. 44; 24 Stat. 389, 25 U.S.C. 348; and 48 Stat. 986, 25 U.S.C. 472 and 479.

§ 259.1 Definitions.

For purposes of making appointments to vacancies in all positions in the Bureau of Indian Affairs a preference will be extended to persons of Indian descent who are:

(a) Members of any recognized Indian tribe now under Federal Jurisdiction;

(b) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;

(c) All others of one-half or more Indian blood of tribes indigenous to the United States;

(d) Eskimos and other aboriginal people of Alaska; and

(e) Until January 17, 1981, a descendant of at least one-quarter degree Indian ancestry of a currently Federally-recognized tribe whose rolls have been closed by an act of Congress.

§ 259.2 Appointment actions.

(a) Preference will be afforded a person meeting any one of the standards of § 259.1 whether the appointment involves initial hiring, reinstatement, transfer, reassignment or promotion.

(b) Preference eligibles may be given a Schedule A excepted appointment under 5 CFR 213.3112(a)(7). However, if the individuals are within reach on a Civil Service Register, they may be given a competitive appointment.

§ 259.3 Application procedure for preference eligibility.

(a) Proof of eligibility must be submitted with the person's application for a position.

(b) In order for a person to be considered a preference eligible according to the standards of § 259.1, they must submit proof of membership, descendency or degree of Indian ancestry as indicated on rolls or records acceptable to the Secretary.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular No. A-107.

FORREST J. GERARD,
Assistant Secretary for
Indian Affairs.

[FR Doc. 78-1194 Filed 1-16-78; 8:45 am]

[1505-01]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 5—LABOR STANDARDS PROVISION APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NON-CONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND THE SAFETY STANDARDS ACT)

Correction

In FR Doc. 77-35295 appearing on page 62132 in the issue for Friday, December 9, 1977, in the "Date" paragraph, middle column, page 62132, the effective date reading "January 9, 1977" should read "January 9, 1978".

[3910-01]

Title 32—National Defense

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER G—ORGANIZATION AND MISSION—GENERAL

PART 865—PERSONNEL REVIEW BOARDS

Subpart B—Air Force Discharge Review Board

ADDRESS: INQUIRIES FOR INDEXES

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending this part to add an address where inquiries may be made for indexes. This address was inadvertently omitted from the rule. The intended effect of this amendment is to make the public aware of the source for the index of documents available for public inspection and copying in connection with the Air Force Discharge Review Board statements of findings.

EFFECTIVE DATE: September 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Colonel Lee, Principal Assistant for Discharge Review Matters, Office of the Secretary of the Air Force (Personnel Council), Commonwealth Building, 1300 Wilson Boulevard, Room 920, Arlington, Va. 22209, 202-694-5418.

SUPPLEMENTARY INFORMATION: On May 10, 1977, the Department of the Air Force, DOD, published a final rule (42 FR 23601) to revise 32 CFR Part 865, Subpart B, Air Force Discharge Review Board. On July 15, 1977 amendments to that part were published (42 FR 36450). This amendment is to add an address that was inadvertently omitted from the revision.

The legal authority for this part is Sec. 8012, 70A Stat. 488, sec. 1553, 72 Stat. 1267, 10 U.S.C. 8012, 1553.

Accordingly, 32 CFR Part 865 is amended as follows:

§ 865.109 [Amended]

Section 865.109 is amended by adding the following sentence to paragraph (e)(3):

(e) * * *

(3) * * * Inquiries for indexes should be addressed to: Armed Forces Discharge Review/Corrections Board Reading Room, Pentagon Concourse, Washington, D.C. 20301.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc. 78-1189 Filed 1-16-78; 8:45 am]