

... Effective October 20, 1988

Lincoln, IL—Logan Country, VOR RWY 3, Amdt. 5
 Lincoln, IL—Logan Country, NDB RWY 21, Amdt. 5
 Wahoo, NE—Wahoo Muni, NDB RWY 20, Amdt. 2

... Effective October 6, 1988

Bismarck, ND—Bismarck Muni, VOR-A, Amdt. 19
 Bismarck, ND—Bismarck Muni, NDB RWY 31, Amdt. 30
 Bismarck, ND—Bismarck Muni, ILS RWY 13, Amdt. 2
 Bismarck, ND—Bismarck Muni, ILS RWY 31, Amdt. 32
 Bismarck, ND—Radar-1, Amdt. 1

... Effective September 22, 1988

San Francisco, CA—San Francisco Intl, ILS RWY 28L, Amdt. 18
 San Francisco, CA—San Francisco Intl, ILS RWY 28R, Amdt. 8
 Cadillac, MI—Wexford County, NDB RWY 7, Amdt. 10, CANCELLED
 Cadillac, MI—Wexford County, NDB RWY 7, Orig.
 Cadillac, MI—Wexford County, NDB RWY 25, Amdt. 6, CANCELLED
 Cadillac, MI—Wexford County, NDB RWY 25, Orig.
 Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 3
 Cadillac, MI—Wexford County, RNAV RWY 7, Amdt. 6
 Cadillac, MI—Wexford County, RNAV RWY 25, Amdt. 5
 Fremont, NE—Fremont Muni, NDB RWY 13, Amdt. 5
 Plattsmouth, NE—Plattsmouth Muni, NDB RWY 34, Amdt. 3
 Wayne, NE—Wayne Muni, NDB RWY 22, Amdt. 2
 Shirley, NY—Brookhaven, ILS RWY 6, Orig.
 Marion, OH—Marion Muni, VOR RWY 24, Amdt. 5
 Marion, OH—Marion Muni, NDB RWY 12, Amdt. 3
 Newport, RI—Newport State, LOC RWY 22, Amdt. 4
 Greer, SC—Greenville-Spartanburg, ILS RWY 3, Amdt. 19
 Brownwood, TX—Brownwood Muni, VOR RWY 17, Amdt. 10
 Brownwood, TX—Brownwood Muni, VOR/DME RWY 35, Orig.
 Brownwood, TX—Brownwood Muni, LOC RWY 17, Amdt. 3
 Fort Worth, TX—Oak Grove VOR/DME-A, Amdt. 2, CANCELLED
 Fort Worth, TX—Oak Grove, RNAV RWY 35, Orig., CANCELLED

... Effective July 28, 1988

Culpeper, VA—Culpeper Country, NDB-A, Amdt. 1

The FAA published an Amendment in Docket No. 25841, Amdt. No. 1377 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 133, Page 26234; dated Tuesday, July 12, 1988) under § 97.25 effective August 25, 1988, which is hereby amended as follows:
 Roxboro, NC—Person County, LOC RWY 6, Orig., EFF August 25, 1988 is hereby rescinded.

The FAA published an Amendment in Docket No. 25668, Amdt. No. 1379 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 148, Page 29001; dated Tuesday, August 21, 1988, under § 97.27 effective September 22, 1988 which is hereby amended as follows:

Shishmaref, New Shishmaref, NDB RWY 5, Orig.
 Shishmaref, New Shishmaref, NDB RWY 23, Orig., effective dates should read October 20, 1988.

[FR Doc. 88-18738 Filed 8-17-88; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 9149]

**Ogilvy & Mather International, Inc.;
 Prohibited Trade Practices and
 Affirmative Corrective Actions**

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a portion of a 1983 consent order (48 FR 2316) with The Ogilvy Group, Inc., formerly Ogilvy & Mather International, Inc., the advertising agency for Thompson Medical Co., Inc., the makers of the topically applied analgesic "Aspercreme", by making two modifications in accordance with paragraph eight of the consent order so that the Ogilvy order matches the language in the Thompson order.

DATES: Consent Order issued Jan. 4, 1983. Modified Order issued May 24, 1988.

FOR FURTHER INFORMATION CONTACT:
 Justin Dingfelder or Terrence Boyle,
 FTC/S-4631, Washington, DC 20580.
 (202) 326-3017 or 326-3016.

SUPPLEMENTARY INFORMATION: In the Matter of Ogilvy & Mather International, Inc. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, as set forth at 48 FR 2316, remain unchanged.

List of Subjects in 16 CFR Part 13

Advertising, Drugs, Trade practices.

(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, 52)

BEFORE FEDERAL TRADE COMMISSION

Commissioners: Daniel Oliver, Chairman,
 Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

[Docket No. 9149]

**Order Reopening the Proceeding and
 Modifying Cease and Desist Order**

In the Matter of Ogilvy & Mather International, Inc., a corporation.

On February 5, 1981, the Commission issued its complaint in this proceeding alleging that Thompson Medical Co., Inc. ("Thompson"), and its advertising agency, Ogilvy & Mather International, Inc. ("Ogilvy"), had made false and deceptive representations in advertising materials for Thompson's over-the-counter topically applied analgesic "Aspercreme" in violation of section 5 of the F.T.C. Act, 15 U.S.C. 45 ("section 5"). On October 4, 1982, the Commission accepted from Ogilvy an "Agreement Containing Consent Order to Cease and Desist" for public comment and on January 4, 1983, issued the negotiated consent order. The litigation against Thompson continued.

Paragraph 8 of the Ogilvy consent agreement specified that:

8. No part or provision of this Order shall become binding upon respondent until the effective date of a final order to cease and desist against Thompson Medical Company, Inc. or its successors or assigns. If a final order against Thompson Medical Company, Inc. in this proceeding contains a provision different from the provision that correspond[s] to the provision in Part I(A) of this Order or contains a definition of "competent and reliable scientific or medical evidence" that differs from Part II of this Order, then this Order shall be reopened for the sole purpose of conforming said provision or said definition in this Order with the corresponding provision or definition in the Thompson Medical Company, Inc. order. In the event that the Complaint in this matter against Thompson Medical Company, Inc. is dismissed in whole, then the Commission, upon the application of respondent, shall set aside this Order.

On November 24, 1984, the Commission issued a cease-and-desist order against Thompson. 104 F.T.C. 648. Thompson petitioned for review of the order, which was affirmed by the Court of Appeals. 791 F.2d 189 (DC Cir. 1986). Thompson then petitioned for *certiorari*, and the Commission's order became final in early 1987 after the Supreme Court denied that petition. 107 S.Ct. 1289 (1987). Consistent with Paragraph 8 of the Ogilvy consent agreement, the Commission's order against Ogilvy became effective at the same time as the Thompson order.

On November 17, 1987, Ogilvy filed a request that the Commission reopen this proceeding and modify the 1983 consent order against Ogilvy. The request cites Paragraph 8 of the "Agreement Containing Consent Order to Cease and

Desist" ("consent agreement") as justification for certain modifications to Parts IA and II of the order and also asserts that changed conditions of fact and law and the public interest justify modification of other parts of the order.

The Commission's order against Ogilvy comprises seven parts. Part I prohibits respondent from misrepresenting the ingredients of any drug product, from misrepresenting that any drug product is new or involves any new principle, and from misrepresenting any test or study of any drug product or the effectiveness of any drug product. Part II of the order prohibits certain effectiveness and side effect claims for any topically applied drug product unless the claims are substantiated. Parts III, IV, V and VII of the order impose record-keeping requirements and mandate notification of the Commission concerning corporate changes and distribution of copies of the order and require submission of compliance reports. Part VI of the order states that the order does not apply to three named corporate subsidiaries of Ogilvy.

Ogilvy first seeks modifications of Parts IA and II of the order, which it believes should be granted on the basis of Paragraph 8 of its consent agreement, quoted above. The modification to Part IA would replace the current language banning use of the tradename "Aspercreme" for a product that does not contain therapeutically significant quantities of aspirin with language permitting use of that tradename for such a product, provided the advertising and labeling using the tradename "clearly and prominently disclose that the product does not contain aspirin." The modified language would include explicit directions concerning the permissible disclosures for television, radio and print advertising and for labels. The requested modifications to Part IA of the order will conform a portion of the order against Ogilvy covered by Paragraph 8 of Ogilvy's consent agreement to the parallel *Thompson* language, and the Commission agrees that the changes are justified.

Ogilvy also requests that the Commission modify to reflect the *Thompson* decree the language in Part II of the order requiring that clinical studies conform to the requirements set forth in 21 CFR Parts 314 and 330. Ogilvy's proposed order would require clinical studies to conform to "acceptable designs and protocols." This change too will conform a portion of the *Ogilvy* order covered by Paragraph 8 of the consent agreement to the parallel provision of the *Thompson*

order, and the Commission agrees that it is justified.

Ogilvy further requests that Part VI of the order be modified. Part VI of the present order excepts from the scope of the decree "three subsidiary corporations wholly owned by respondent unless a product otherwise covered by the order is assigned or transferred from respondent to one" of them. Ogilvy seeks to except two additional subsidiaries from the scope of the order. One, Rolf Warner Rosenthal, Inc., was acquired after the order was issued and specializes in advertising of prescription drugs to health care professionals. The other, Euramerica, Inc., did not engage in advertising at the time the order was issued, but now performs some advertising activities. Ogilvy asserts that both subsidiaries are "independent" and that the "intent of Part VI is to exempt all independent Ogilvy subsidiaries." Request for Modification at 9.

Ogilvy asserts that its acquisition of Rolf Warner Rosenthal, Inc., and its conversion of Euramerica, Inc., to an advertising subsidiary constitute changed facts that under section 5 require the Commission to reopen and modify the order. Nothing in the consent agreement and order suggests that the Commission's intent to exempt "independent" subsidiaries. Ogilvy has not suggested any other reason to construe the order this way, nor does it suggest what an "independent" subsidiary is under the terms of the order. Nothing in the consent agreement or the order compels the Commission to exempt additional subsidiaries of Ogilvy simply on a showing that they exist. The acquisition of Rolf Warner Rosenthal, Inc., and the conversion of Euramerica are not, therefore, changes of fact that require granting Ogilvy's request for modification.

Absent a showing of changed fact or law, the Commission may modify its orders if it concludes that to do so would be in the public interest. To meet its burden in this respect, Ogilvy must show that if the two additional subsidiaries are not exempted from the order, it will sustain competitive harm that is greater than or different from the harm that it reasonably might have expected at the time it agreed to the consent order. See, e.g., *Damon Corp.*, 101 F.T.C. 689 (1983) (show cause order). Ogilvy has not carried this burden. Indeed, it has shown only that whatever harm the two new subsidiaries will sustain is the same as that currently being suffered by the company itself. According to Ogilvy, that alleged harm stems principally from the fact that the

Ogilvy order is less stringent than certain orders in subsequent and unrelated Commission cases against competing advertising agencies.

Ogilvy submitted an affidavit from its Chairman stating that current clients have "expressed concern over the breadth of Ogilvy's order" (Phillips Aff. ¶ 8) and, specifically, that "the breadth of the order will chill Ogilvy's creative efforts * * * as Ogilvy seeks to avoid even the possibility of a civil penalty proceeding." Phillips Aff. ¶ 9. The company also has stated that the harm that would be suffered by the two new subsidiaries if the Commission refused to extend the current exemption would be the same as that being sustained by Ogilvy itself.

The Commission concludes that Ogilvy has provided no reason to treat the two subsidiaries differently from the company itself. Nor has Ogilvy shown that such harm as it has alleged is different from, or more severe than, it reasonably might have anticipated at the time the order issued. We therefore decline to grant the modification expanding the subsidiary exemption.

Ogilvy also seeks modification of several other portions of its order to conform it to the *Thompson* decree. These modifications are not covered by Paragraph 8 of the consent agreement because they do not appear in the parts of the order to which that paragraph is expressly directed. Ogilvy argues that these modifications are justified based on the Commission's action in *Benton & Bowles, Inc.*, 82 F.T.C. 1437 (1973), 102 F.T.C. 1837 (1983). In that case, the Commission issued similar complaints against an advertiser, Sterling Drug Co., and Benton & Bowles, one of its advertising agencies. Benton & Bowles agreed to a consent order, but Sterling continued to litigate and ultimately prevailed with respect to some of the allegations. The Commission dismissed those portions of the *Sterling* complaint and then vacated the *Benton & Bowles* consent order because it had derived from the portions of the *Benton & Bowles* complaint that were the same as the portions dismissed in *Sterling*.

This part of the company's request for modification would effect the following changes in the order:

Part IC: Deletion of bans on certain claims concerning efficacy based on the newness of drug or newness of mechanical principles, leaving in effect ban on claims concerning efficacy based on new scientific principles, adding the limiting description "over-the-counter" to modify "drug" and revising the existing geographic limitation to conform to the *Thompson* language: i.e., "available for

purchase in the United States" rather than "nationally available for purchase;"

Parts IIC and D: Deletion of bans on certain claims concerning side effects;

Part IF: Deletion of ban on claims made without substantiation concerning the mode of action by which a drug treats a condition;

Parts IIA and B: Deletion of coverage in provision banning deceptive effectiveness claims of claims relating to a drug's ability to treat or relieve "any other disease or condition" in addition to "symptoms of any musculoskeletal disorder;"

Parts IB and D: Deletion of redundant prohibitions concerning misrepresentations as to the presence of an ingredient and substitution of the combined provision in Part ID of the *Thompson* order; and

Part VII: Substituting the *Thompson* requirement for filing compliance reports within 60 days of service "and at such other times as the Commission may require" for the present requirement that they be filed within 60 days after the order becomes final and "annually thereafter for three years."

As in the Commission's decision vacating the *Benton & Bowles* order, the dismissal of certain allegations in the *Thompson* complaint is a change of law that requires modifying those parts of the order that relate to the complaint allegations that were dismissed. The Commission agrees, therefore, that the changes described above relating to Parts IC and IIC and D are appropriate.

The remaining modifications described above do not relate to complaint allegations that were dismissed, but rather, to allegations that resulted in less rigorous order provisions in the *Thompson* decree than those agreed to by Ogilvy. Although these modifications do not stem from dismissed complaint allegations, Ogilvy appears to argue that *Benton & Bowles* is controlling precedent. It also argues that "as a matter of fundamental fairness Ogilvy should not be punished more severely than the advertiser." Request for Modification at 20. We do not adopt either of these proffered justifications for the requested changes.

The Commission's action in *Benton & Bowles* does not compel us to conform the orders of advertising agencies and their advertisers except in the narrow circumstances in which the complaint allegations against the advertiser were replicated in the complaint against the agency, where the allegations in the advertiser's complaint were dismissed, and where the record showed no basis for imposing disparate relief on the two parties. We therefore decline to grant these modifications on the basis of that decision.

We also do not subscribe to the notion that "fundamental fairness" necessarily compels the Commission, as a general matter, to conform its orders against advertisers and their advertising

agencies. Each respondent stands on its own, and the Commission may decide that it is appropriate to impose more stringent order provisions for either the advertiser or its agency. The only restriction is that the relief against any party must be reasonably related to the unlawful conduct found. *Jacob Siegel Co. v. FTC*, 327 U.S. 808, 611-13 (1946); see also *FTC v. National Lead Co.*, 352 U.S. 419, 428-31 (1957); *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952).

Paragraph 8 of Ogilvy's consent agreement specifies two portions of its consent order that were to be modified to conform to any more lenient language that subsequently might be made applicable to *Thompson*. The company has not shown why, at this time, the Commission should ignore the expressly limited language in Paragraph 8 and modify other provisions in the order absent a demonstration that the modifications are justified on grounds of changed fact or law or the public interest. As explained elsewhere in this order, the Commission has concluded that Ogilvy has not shown that the current order is causing it any harm that is different from or more severe than it reasonably could have anticipated when it signed the consent agreement. Therefore, we have decided to deny the company's request for these changes.

Finally, Ogilvy requests modification of the preamble to Part I of the order—language not covered by Paragraph 8 of the consent agreement—to limit the scope of its coverage even more narrowly than the scope of the order against *Thompson*. The *Ogilvy* order applies to all "drugs." The *Thompson* order applies to all "OTC drugs." Ogilvy seeks to have this language modified to cover only "OTC topically applied analgesic drugs." It argues that this request is warranted because the coverage of the orders against two of the three advertising agencies in the Commission's recent "analgesics" cases¹ and the coverage of the order against *Sterling Drug*, one of the advertisers, were limited to "internal analgesic drugs."²

¹ *American Home Products Corp.*, 98 F.T.C. 136 (1981); *Bristol-Myers Co.*, 102 F.T.C. 21 (1983); *Sterling Drug, Inc.*, 102 F.T.C. 395 (1983).

² Although the order against *Sterling* is limited to "internal analgesic drugs," the order against its advertising agency, *Dancer-Fitzgerald-Sample* ("Dancer"), contains the same "all OTC drug" coverage as the order in *Thompson*. 96 F.T.C. 1 (1980). The Commission dismissed the Administrative Law Judge's order against a second advertising agency in *Sterling Drug*. 102 F.T.C. at 791.

The Commission's decision to limit the orders in the "analgesics" cases relied on by Ogilvy is not a change of fact or law that would require modification of the scope of the *Ogilvy* order. The order against *American Home Products Corp.* and its advertising agency, C.T. Clyne, which covered a more narrow range of products, was issued in September, 1981, well before the *Ogilvy* consent order. The mere fact that the Commission issues different orders in cases against different companies at different times does not justify conforming earlier orders to those issued later. The Commission decides each matter on its own merits and structures the relief mandated to fit the circumstances.

The Commission determines the product coverage in a particular order based on a number of considerations related to the facts of each specific case such as the extent of the respondent's unlawful conduct, whether the respondent knew or should have known that its conduct was improper or unlawful and the perceived need for fencing-in relief. Here, Ogilvy consented to its order, including the present product coverage, at a time when it should have known that the product coverage in that order was broader than that contained in *American Home Products*. Some months after issuance of Ogilvy's consent order, the Commission issued its orders against *Bristol-Myers*, *Sterling Drug* and certain of their advertising agencies.

The scope of product coverage is always an important question in Commission orders that prohibit deceptive advertising. The fact that the Commission chose to impose broader orders on some and more narrow orders on others indicates that the Commission decided it was appropriate to treat the companies differently. Ogilvy has presented nothing to suggest that we should go behind that determination.

The mere fact that several of those orders, like the order against *American Home Products* and C.T. Clyne, included more limited product coverage than that in the *Ogilvy* and *Thompson* decrees is not a change of law or fact sufficient under section 5 to require reopening of Ogilvy's consent and conforming it to the more favorable "analgesics" orders. This is particularly true in light of the different product coverage provisions in the "analgesics" cases themselves. As already noted, the product coverage in the order against *Dancer* in the *Sterling Drug* case is the same as that in *Thompson*, although the orders against *Sterling Drug* itself, and *Ted Bates* and

Young & Rubicam in *Bristol-Myers*, for example, are not. See note 2, *supra*.

Ogilvy also has submitted the affidavit of its Chairman in support of this portion of the company's request for modification. That affidavit states that "[a]s a result of its much broader order, Ogilvy's ability to compete against those agencies has been threatened." Aff. at ¶ 7. It also states that "[a] number of Ogilvy's clients have expressed concern over the breadth of Ogilvy's order" (*Id.* at ¶ 8), and that its clients "are concerned that the breadth of Ogilvy's order will chill Ogilvy's creative efforts with respect to all drug products as Ogilvy seeks to avoid even the possibility of a civil penalty." *Id.* at ¶ 9. These statements are conclusory and self-serving. They do not demonstrate that the current order has imposed on Ogilvy significant harm that could not reasonably have been anticipated at the time the company agreed to its terms, and they offer no information relating to actual, as opposed to speculative, competitive injury. Such information would have had a bearing on the possible public interest in granting the modification.

Under the FTC Act and the Commission's rules, a Commission order need not be altered unless the respondent demonstrates a change of law or fact requiring the modification or the Commission decides that the public interest warrants the changes sought. Ogilvy has failed to carry its burden in this respect, and the Commission, therefore, declines to grant this portion of Ogilvy's request. Similarly, we decline to grant Ogilvy's request that the product scope of Ogilvy's order be modified "at a minimum" to read "OTC drugs" as to Part I and "OTC topical analgesic drugs" as to Part II.

For the reasons above, the Commission has decided that some of the modifications proposed by Ogilvy are appropriate. Accordingly,

It is ordered that this proceeding be, and it hereby is, reopened and that the order therein against Ogilvy & Mather International, Inc., be modified to read as follows:

Order

Part I

It is ordered that respondent Ogilvy & Mather International, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, offering for sale, sale or distribution of any over-the-counter "drug," as that term is defined

in the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Employing the brand name "Aspercreme" for any such product or otherwise representing, directly or by implication, that an active ingredient of any such product is aspirin, unless such product contains aspirin in therapeutically significant quantities; provided, however, that the brand name "Aspercreme" may be used for such product if its advertising and labeling clearly and prominently disclose that the product does not contain aspirin.

(1) In television advertisements, an explicit and simple aspirin disclaimer statement (such as "ASPIRIN FREE") shall be superimposed on the television screen simultaneously with a vocal aspirin disclaimer statement (such as "Aspercreme does not contain aspirin") at the end of each advertisement;

(2) In radio advertisements, an explicit aspirin disclaimer statement (such as "Aspercreme does not contain aspirin") shall be made at the end of each advertisement;

(3) In print advertisements, an explicit aspirin disclaimer statement (such as "ASPERCREME DOES NOT CONTAIN ASPIRIN") shall be displayed prominently and conspicuously in relation to each such advertisement as a whole;

(4) In labeling, an explicit aspirin disclaimer statement (such as "DOES NOT CONTAIN ASPIRIN") shall be prominently and conspicuously printed in the front package panel (or in the front of the container if no package is used).

B. Representing, directly or by implication, that any such drug involves a new scientific principle, when such drug or one involving such principle has been available for purchase as an over-the-counter drug in the United States for more than one year.

Part II

It is further ordered, that respondent Ogilvy & Mather International, Inc., its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any "drug," as the term is defined in the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

A. Employing any trade name for any such drug which represents, directly or

by implication, that such drug contains an active ingredient which it in fact does not.

B. Representing, directly or by implication, that any such drug has an ingredient when in fact it does not have that ingredient.

C. Misrepresenting the contents, validity, results, conclusions or interpretations of any test or study.

D. Representing, directly or by implication, the mode of action by which any such drug treats, mitigates, or cures any symptom, disease, or condition unless respondent possesses and relies upon a reasonable basis substantiating the representation.

Part III

It is further ordered, that respondent Ogilvy & Mather International, Inc., its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any topically applied drug, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. Representing, directly or by implication, that any such topically applied drug is effective for the treatment or relief of the symptoms of any musculoskeletal disorder (such as arthritis, tendonitis, bursitis, or rheumatic disorders), or any other disease or condition;

B. Representing, directly or by implication, that any such topically applied drug is as fast or faster, or is as effective or more effective, than aspirin in the treatment or relief of the symptoms of any musculoskeletal disorder (such as arthritis, tendonitis, bursitis, or rheumatic disorder), or any other disease or condition; unless at the time of the dissemination of any such representation respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific or medical evidence substantiating that representation. For the purposes of this Order, competent and reliable scientific or medical evidence shall include at least two well-controlled, double blinded clinical studies which conform to acceptable designs and protocols and are conducted by different persons, independently of each other. Such persons shall be qualified by training and experience to conduct such studies. Provided, however, with respect to any representation covered by this Part, if the Food & Drug Administration promulgates any final standard which

establishes conditions under which such product is safe and effective, then in lieu of the above, respondent may possess and rely upon scientific evidence which fully conforms to such final standards as a reasonable basis for said representation. *Provided, further,* however, where the evidence relied upon by respondent was not directly or indirectly conducted or controlled by respondent, it shall be an affirmative defense to an alleged violation of this Part for respondent to prove that it reasonably relied on the expert judgment of its client or of an independent third party in concluding that a reasonable basis exists which meets the requirements of this Part. Such expert judgment shall be in writing signed by a person qualified by education or experience to render the opinion. The written opinion shall describe the contents of the evidence upon which the opinion is based and shall set forth the qualifications of the person to render the opinion.

Part IV

It is further ordered that respondent Ogilvy & Mather International Inc., its successors and assigns, and its officers, representatives, agents and employees, for a period of three years after respondent last disseminates the advertisements for products covered by this Order, shall retain all test results, data, and other documents or information on which it relied for its representations or any documentation which contradicts, qualifies or calls into serious question any claim included in such advertisements which were in its possession during either their creation or dissemination. Such records may be inspected by the staff of the Commission upon reasonable notice.

Part V

It is further ordered that respondent notify the Commission at least thirty (30) days prior to the effective date of 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.

Part VI

It is further ordered that respondent shall distribute a copy of this Order to each of its operating divisions, and to each of its officers who are engaged in the preparation and placement of advertisements for products covered by this order

Part VII

It is further ordered that the provisions of this Order shall not apply to Scali, McCabe, Sloves, Inc.; Cole & Weber, Inc.; and Rogers, Weiss/Cole & Weber Advertising, three subsidiary corporations wholly owned by respondent, unless a product otherwise covered by this Order is assigned or transferred from respondent to one of those corporations. However, respondent shall distribute a copy of this Order to the officers of the aforementioned corporations.

Part VIII

It is further ordered that the respondent shall, within sixty (60) days after this Order becomes final and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by a responsible officer for respondent, setting forth in detail the manner and form in which it has complied with this Order.

By the Commission.
Benjamin I. Berman,
Acting Secretary.

*Statement of Chairman Daniel Oliver
Concurring in Part and Dissenting in
Part in the Matter of Ogilvy & Mather
International, Inc., D. 9149 Petition to
Reopen and Modify Consent Order*

I concur in the Commission's decision to modify the Ogilvy order in accordance with Paragraph 8 of the consent agreement. I also concur in the decision to delete the portions of the order that were derived from complaint allegations later dismissed in the Thompson proceeding. I would go further, however, and grant some of Ogilvy's order requests.

Before turning to those portions of the Commission's order from which I dissent, I offer a few comments on Ogilvy's request to narrow the product coverage of Part I of the order to "any OTC topically applied analgesic drug." I find this to be a closer question than the other Commissioners find it. Ogilvy contends that its conduct was no worse than that of the ad agencies involved in the *American Home Products* and *Bristol-Myers* cases, and that the product coverage of its order should therefore be no broader than the product coverage of the order against those agencies (i.e., coverage should be limited to products of the same pharmacological class and mode of application).

I agree, and Ogilvy does not dispute, that a broader order is appropriate if Ogilvy was more culpable than the other ad agencies. I have reviewed the documents upon which the Commission

relied in concluding that Thompson Medical Company, Ogilvy's client, intended to make a false "contains aspirin" claim for Aspercreme. See 104 F.T.C. at 836. In my view, Ogilvy's contention that there is a less sinister interpretation of the documents has some merit—enough, at least, to raise a question whether Ogilvy really acted more egregiously than its competitors.

Nevertheless, I agree with the decision not to grant Ogilvy's request. Since the issue of Ogilvy's culpability was not litigated, I cannot be certain whether Ogilvy's interpretation of the documents would have been refuted or what other evidence the parties would have presented. In addition, my review of the documents leaves me uneasy about the Commission's ability to make such a difficult factual determination on the basis of the information normally before us in an order modification proceeding.¹ Under the circumstances, I conclude that Ogilvy should not be given the benefit of a litigation victory it chose not to pursue.

I dissent from the Commission's decision not to conform Ogilvy's order to the Thompson decree except to the extent expressly required by Paragraph 8 of the consent agreement. I would allow the other changes requested by Ogilvy to conform its order to Thompson's. Ogilvy argues that denying its request for other modifications will discourage settlements since ad agencies will perceive that they can obtain a less restrictive order by litigating. I am not persuaded by this argument.² I am persuaded, however, that there is no basis in the record for treating Ogilvy more harshly than Thompson. The two respondents were named in a single complaint on the basis of a single set of facts. I fail to see how the public interest is served by maintaining tighter restrictions on one respondent than the other absent some factual distinction justifying disparate treatment.

I also dissent from the decision not to exempt the two additional advertising subsidiaries from the Ogilvy order.

¹ The best course of action in this case might have been to reopen the proceeding for an evidentiary hearing to compare the conduct of Ogilvy with that of its competitors.

² Although in the instance the litigated order turned out to be less restrictive than the consent order, that fact became apparent only in hindsight. At the point Ogilvy was considering whether to sign the consent order, Ogilvy did not know whether the litigated order would be more restrictive or less restrictive than the consent order. Future respondents will be faced with the same uncertainty, and thus will have just as much incentive as ever to settle the Commission's charges.

Ogilvy argues, I believe correctly, that it was understood that subsidiaries would be exempted if it were shown on a case-by-case basis that the subsidiary, by virtue of its management agreement with Ogilvy, would operate independently of Ogilvy. Given this understanding, it is unreasonable to expect Ogilvy to have felt the need to seek more explicit language in the order.³ Clearly, memorializing the understanding would have been the better course, and I would expect such understandings to be committed to writing in future orders. But in this instance, I do not think it is appropriate for the Commission to ignore the intent that guided the negotiation of the order.

The factual determination of whether the new subsidiaries qualify for exemption is a simple one. In my view, Ogilvy has presented sufficient evidence to establish that Rolf Werner Rosenthal and Euramerica, Inc. operate independently of Ogilvy. If these corporations had been advertising subsidiaries of Ogilvy at the time the order was signed, Ogilvy likely would have sought, and the Commission likely would have agreed, to treat them the same as the three subsidiaries specifically exempted in Part VI of the order. The acquisition of RWR and the conversion of Euramerica to advertising after the order was signed are changes of fact that, in my view, justify modification of the order.⁴ Although the emergence of additional subsidiaries was foreseeable at the time the order was signed, Ogilvy, as noted above, had reason to believe that future subsidiaries would be considered for exemption.

[FR Doc. 88-18699 Filed 8-17-88; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 300, 301 and 303

Reporting and Recordkeeping Requirements for Wool Products, Fur Products and Textile Fiber Products

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission issues amendments to reduce the burden of complying with the

labeling requirements of the Rules and Regulations Under the Wool Products Labeling Act of 1939, the Rules and Regulations Under the Fur Products Labeling Act and the Rules and Regulations Under the Textile Fiber Products Identification Act. Under the amendments, the recordkeeping provisions in each of the three regulations are simplified and streamlined, and the Textile Act and Wool Act regulations are clarified to ensure that affected industry members understand that required disclosures may be combined on a single label.

EFFECTIVE DATE: The amendments to these three regulations take effect on September 19, 1988.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 328-3035.

SUPPLEMENTARY INFORMATION:

Background

The Wool Products Labeling Act of 1939, 15 U.S.C. 68(d), requires that all wool products bear a label showing the percentage of wool, recycled wool and non-wool fibers contained in the product and the name of the manufacturer or the distributor. The Textile Fiber Products Identification Act, 15 U.S.C. 70(e), requires that each household textile product bear a label showing the percentage of each fiber contained in the product, using the appropriate generic name for the fiber, and the identity of the manufacturer or distributor. Advertisements for textile products must also show the required information if any mention of fiber content is made. Both acts require disclosure of country of origin. The Fur Products Labeling Act, 15 U.S.C. 69(f), requires the labeling, invoicing and advertising of furs and fur products to show the true name of the animal that produced the fur, whether the fur is used, dyed or imported, and the identity of the manufacturer or distributor. The three acts, as well as the Commission's rules implementing them, apply to manufacturers, distributors and retailers of textile, wool and fur products.

Paperwork Reduction Act of 1980

The Commission has estimated that the labeling and recordkeeping requirements contained in the rules implementing the Textile Fiber Products Identification Act, the Wool Products Labeling Act of 1939, and the Fur Products Labeling Act entail, in the aggregate, more than 20 million hours of paperwork burden, which is approximately fifty percent of the

paperwork burden for all the rules issued by the Commission. As called for by the Paperwork Reduction Act, 44 U.S.C. 3501-3520 ("PRA"), the Commission has reviewed its activities that come within the definitions of "information collection" contained in 5 CFR 1320.7, the rules implementing the PRA. As a result, the Commission has modified several rules to accomplish their statutory or regulatory objectives at a reduced paperwork burden, which is the objective of the amendments set forth in this Notice.

The current burden estimates for the recordkeeping and labeling requirements of the three rules are based on the Commission's original submissions of the Office of Management and Budget ("OMB"), which were made in 1983 in accordance with the PRA provisions and the rules implementing them. Based on research and informal contacts with industry representatives, the Commission increased the estimates for the Textile and Wool Rules by slightly more than 16% cumulatively to reflect increases in the markets affected by the rules. The estimates for the Fur Rules were not adjusted because, according to industry representatives and market statistics, the fur market has not increased substantially since 1983.

The adjusted estimates for the combined recordkeeping and labeling burden are as follows:

Regulation	Adjusted burden hours
Textile Rules.....	¹ 18,600,000
Wool Rules.....	² 2,960,000
Fur Rules.....	³ 138,000

¹ Recordkeeping burden=1,500,000 hours; Labeling burden=17,100,000 hours.

² Recordkeeping burden=215,000 hours; Labeling burden=2,745,000 hours.

³ Recordkeeping burden=38,000 hours; Labeling burden=100,000 hours.

Because the amendments would modify these existing information collection requirements, the Office of the General Counsel submitted Standard Form 63 and Supporting Statement to OMB for review under the Paperwork Reduction Act and the rules implementing it. On April 25, 1988, OMB approved the Commission's request for clearance of the proposed changes and re-issued the following control numbers for the Commission's use through April 25, 1991: 3084-0053 (Wool Rules), 3084-0064 (Fur Rules) and 3084-0052 (Textile Rules).

³ Moreover, here there was a conscious decision not to include a generalized exemption in order to avoid creating a loophole by which Ogilvy could circumvent the order.

⁴ Granting this modification would not enable Ogilvy to circumvent the order by steering clients to RWR and Euramerica. Part VI of the order provides that the exemption does not apply if a product otherwise covered by the order is (1) transferred by Ogilvy to an exempted subsidiary, or (2) assigned by Ogilvy to an exempted subsidiary.

The Proposal To Review the Information Collection Requirements

On February 29, 1988,⁴ the Commission published a Federal Register Notice that reviewed the information collection requirements contained in the above-mentioned rules. The Notice included proposed amendments to simplify and streamline the recordkeeping provisions in each of the three regulations, and to ensure that industry members affected by the Textile and Wool regulations understand that the required disclosures may be combined on any label on the garment, including the Commission's care label, as long as the location and conspicuousness requirements of the regulations are met. The Notice also sought comment on other ways to reduce the paperwork burden of the members of these industries. Four comments, which were generally favorable and supportive, were received in response to this Notice.

Comments on the Proposed Amendments

The February 29 Notice solicited comment on both the substantive and information collection aspects of the proposed changes and directed the public to send substantive comments to the Commission and paperwork comments to OMB. The amendments were intended to reduce the paperwork burden of the regulations in two ways: (1) By simplifying recordkeeping requirements; and (2) by eliminating unnecessary labels. The comments received by the Commission primarily addressed the substantive aspects of the proposals without detailed comment on the paperwork aspects.

Each proposal, the comments received that related to it, and the resulting recommended amendment are discussed separately below.⁵

1. Reducing Recordkeeping Requirements

The review of these rules for ways to reduce paperwork burden focused primarily on recordkeeping because the content of the required information

disclosures is tightly tied to the requirements of the statutes and cannot be altered by the Commission. For example, the labels required by the Wool Act and Textile Act must show fiber content, name (or registered identification number) of the manufacturer or distributor, and country of origin.⁶ The Commission's review indicates that each of the recordkeeping requirements contains a very specific list of categories of records that must be retained, which requires more (or more detailed) information than is necessary to demonstrate compliance with the statutes and rules. The Notices announcing the original adoption of these requirements, which were published during the period spanning the 1940's and 1950's, do not give reasons for this approach, but detailed "command and control" regulations were generally thought to be appropriate during that period. The amendments delete unnecessary specificity in the rules' enumeration of required records, and substitute a clearer performance requirements.

The record indicates that, under this simplification, records kept in the normal course of business will be sufficient to demonstrate compliance.⁷ Three comments, NAHM,⁸ NKMA,⁹ and NTA,¹⁰ noted that the result of the amendments would be that "a substantial amount of otherwise unnecessary recordkeeping will be eliminated for domestic manufacturers."¹⁰ When compliance can be demonstrated by records kept in the normal course of business, the recordkeeping burden estimates are reduced. The reduction occurs because § 1320.7(b)(1) of the regulations implementing the Paperwork Reduction Act¹¹ excludes from burden estimates

⁴ Two comments touched on industry support for the statutory requirements underlying the labeling and recordkeeping provisions of the Rules. NAHM noted that compliance is "a priority concern" in the hosiery industry (206-23-1). NTA, whose members are concerned primarily with the Wool Act, lent its support to the proposed amendments as long as "neither would substantively change the requirements for manufacturers, importers and retailers of wool products to conspicuously and accurately label the fiber content of their products and keep appropriate documentation thereof." (206-23-4).

⁷ The Commission's staff has informally received information from industry representatives, in addition to the comments formally submitted on the record, to the effect that apparel manufacturers often keep "fabric libraries" in the normal course of business that contain samples of fabrics used and information relating to them, such as fiber content, source, country of origin, price and other information.

⁸ 206-23-1.

⁹ 206-23-3.

¹⁰ 206-23-4.

¹¹ 5 CFR 1320.7(b)(1) (1988).

the time and effort "that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records)." Under the amendments announced today, industry members must keep records that show that the information required by the statutes and regulations has accurately been provided, and that permit tracing finished covered products back to the raw material supplier. This simplification of the recordkeeping does not affect our ability to bring enforcement actions.¹²

2. Eliminating Unnecessary Labels

The second amendment concerns the labels on garments regulated by the Textile and Wool Labeling Acts. The Textile and Wool Acts require certain disclosures and the rules for these Acts implement statutory specifications for placement or conspicuousness of the disclosures (e.g., Rule 15, Textile Rules, Rule 5, Wool Rules). For example, required, information must, by statute, be disclosed on a label located in the center of the neck of garments with necks. In addition to labels containing Textile and Wool Act information, garments must also have care labels,¹³ and may contain other labels, such as brand name labels and labels describing product features.

The Rules do not prohibit combining required information on a single label (for example, Textile Act information with Care Labeling Rule information). However, while allowing additional information on the label, the Rules were written to ensure that required information would not be obscured. In achieving that end, the language of the Rules may unintentionally deter businesses from efficiently combining information on one label. For example, Textile Rule 16(c) states that if non-required information (i.e. information not required by the Textile Act) " * * * is placed on the label or elsewhere on the product, such non-required information shall be set forth separate and apart from the required information and shall not interfere with, minimize, detract from, or conflict with such required information * * *". Consequently, the original burden for the Rules was calculated on the basis that a separate label would be used to

¹² NTA contended that the recordkeeping amendments will not diminish the Wool Act's consumer protection effectiveness, " * * * nor will the amendments apparently lessen the Federal Trade Commission's enforcement ability." (206-23-4).

¹³ Care Labeling of Textile Wearing Apparel and Certain Piece Goods, 16 CFR Part 423 (1988).

⁴ 53 FR 5968.

⁵ The comments are each filed on the public record on both of two rulemaking dockets—Docket No. 204, pertaining to the Rules and Regulations Under both the Wool Products Labeling Act of 1939 and the Fur Products Labeling Act, and Docket No. 206, pertaining to the Rules and Regulations Under the Textile Fiber Products Identification Act. They are filed chronologically in a separate category pertaining to this rulemaking under the Paperwork Reduction Act—204-20-1 through 4 for the Wool and the Fur Rules, and 206-23-1 through 4 for the Textile Rules. For simplicity's sake, this discussion refers to them as they are listed under the Textile Rules, as, for example, "AAMA, 206-23-2".

comply with the requirements of each of the labeling acts.

The amendments are to Rule 10 of the Wool Rules and Rule 16 of the Textile Rules (18 CFR 300.10 and 303.16) to clarify that combining information required by the Rules with other information on a single label is permitted so long as the location and conspicuousness requirements of the required information are satisfied and the combination of information is not misleading.¹⁴ For example, the name, fiber content and country of origin information required by the Wool and Textile Acts could be combined with Care Labeling information on a single label placed in the neck of a jacket or shirt or in a conspicuous location on a skirt or a pair of trousers.

The only specific comment on whether, and to what extent, industry members are presently combining information on labels came from NKMA, who noted that they believed a large number of their members are combining information on labels as permitted by the current rules. However, NKMA noted that the added flexibility resulting from the clarification of the labeling requirements could benefit their members "in certain instances."¹⁵ The other commenters generally believed that the package of amendments would reduce their paperwork burden. Further, other industry members, not just those in NKMA, may take advantage of label combining as a result of the clarification. Consequently, the Commission is adopting the clarifying amendments.

There is no similar amendment to the Fur Rules. Because the Care Labeling Rule does not apply to fur products, significant burden reduction through combining labels (i.e., required labels with brand labels) may be less likely. The February 29 Notice included a question on whether an amendment to the Fur Rules clarifying that required information could be combined onto other labels would reduce the labeling burden. Because the Fur Rules (unlike the Textile and Wool Rules) specify a minimum size (1 1/4 inches by 2 3/4 inches) for the label (Rule 27) and minimum type size for the disclosures (Rule 29), the Notice also included a question on

whether replacing the label and type size specifications in Fur Rules 27 and 29 with a general conspicuousness standard would be desirable, and whether this would (and to what extent) reduce the paperwork burden. Because the Commission received no comment in response to these questions, it is making no changes to the Fur Rules in this area.

Other Issues

In addition to setting out the proposed amendments to the recordkeeping and labeling requirements of the three rules, the February 29 Notice solicited comment on the following:

First, under Rule 39 of the Fur Rules, certain fur trim products that cost twenty dollars or less to the manufacturer who incorporates them into fur products are exempted from disclosure requirements. The Notice solicited comment on whether the twenty-dollar figure should be increased to account for inflation. Since no comment was received, the Commission is not changing the twenty-dollar figure.

Second, the Commission proposed to clarify the Fur Rules by moving material relating to the detection of dyestuffs from the end of Rule 41, which concerns the maintenance of records, to the end of Rule 19, which relates to the disclosure of dyes in fur products. Since this amendment will put all the information regarding dyes in one place, and will not affect the substance of the Rules, the Commission is adopting it, even though no comments on it were received.

Reduction in Paperwork Burden Hours

In the Supporting Statement that the Commission authorized the General Counsel's Office to submit to OMB to obtain clearance for the proposed amendments, there were estimates of the amount of burden hour reductions each proposed amendment would effect, if enacted. OMB has accepted these estimates, based on the assumption that the amendments will be enacted in substantially the form in which they were proposed, and has adjusted its calculation of the Commission's Information Collection Budget accordingly. Although three comments generally stated that the amendments would be helpful¹⁶ and one stated they would probably not change the existing burden,¹⁷ no comments provided specific data on the numbers of hours that are associated with these requirements or on the number of hours of burden reduction that could result

from enactment of the proposed amendments. Consequently, the Commission is proceeding on the basis of the estimates that OMB has accepted. The rationale for the specific burden reduction calculations can be found in Section 13 of the Supporting Statement sent to OMB, which is available during business hours in the Commission's Public Reference Room at the Federal Trade Commission's main offices in Washington, DC.

The approximately 3.5 million hours worth of burden reductions by which OMB has reduced the Commission's Information Collection Budget are summarized as follows:

	Burden hour reductions
Recordkeeping:	
Textile Rules	1,350,000
Wool Rules	190,000
Fur Rules	30,000
Labeling:	
Textile Rules	1,710,000
Wool Rules	274,000

Regulatory Flexibility Act

The Notice announcing the proposed amendments did not contain a regulatory analysis under the Regulatory Flexibility Act (5 U.S.C. 603-604). This analysis was not required because the Commission believed that the amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission reached this conclusion because the amendments, if enacted, will impose no additional cost on small entities and will have the same effect on all business entities within the affected industries, regardless of their size. The reduced burden, with respect to both recordkeeping and labeling practices, will potentially benefit small, medium and large entities within the textile, wool and fur industries.

The February 29 Notice, however, discussed the applicability of the Regulatory Flexibility Act to the proposed amendments and requested any information that would bear on whether the proposed amendments would have a significant economic impact on a substantial number of small entities. On the basis of the above analysis and the single comment received,¹⁸ which was to the effect that the amendments "would not appear to have" a significant economic impact on small entities, the Commission believes that the preparation of a final regulatory flexibility analysis is not warranted.

¹⁴ The revisions to the Rules are printed in the "Amendments" section of the Notice. The Rules have virtually identical requirements and provisos for conspicuousness and the arrangement of information. However, the requirements appear in different subsections of each of the Rules, not all of which are printed in the "Amendments" section. Consequently, although the requirements, as viewed in the "Amendments" section, may not seem the same, that is only because other portions of the Rules are not reprinted there.

¹⁵ 206-23-3.

¹⁶ NAHM, 206-23-1; AAMA, 206-23-2; NTA, 206-23-4.

¹⁷ NKMA, 206-23-3.

¹⁸ NKMA, 206-23-3.

In light of the above, the Commission certifies, under section 5 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic effect on a substantial number of small entities.

List of Subjects

16 CFR Part 300

Labeling, Textile, Trade practices, Wool.

16 CFR Part 301,

Fur, Labeling, Trade practices.

16 CFR Part 303

Labeling, Textile, Trade practices.

Amendments

For the reasons set forth in the preamble, Title 16, Chapters 300, 301 and 303 of the Code of Federal Regulations is amended as follows:

PART 300—RULES AND REGULATIONS UNDER THE WOOL PRODUCTS LABELING ACT OF 1939

The authority citation for Part 300 continues to read as follows:

Authority: 15 U.S.C. 68 *et seq.* and 15 U.S.C. 70 *et seq.*

The Commission is amending Part 300 of Title 16 of the Code of Federal Regulations by revising § 300.10(a) and 300.31 to read as follows:

§ 300.10 Arrangement of label information.

(a) The required information may appear on any label attached to the product, provided all the pertinent requirements of the Act and Regulations are met and so long as the combination of required information and non-required information is not misleading. All parts of the information required to be displayed in the label of the product shall be set forth in immediate conjunction with each other, and in type or lettering plainly legible and conspicuous, and all parts of the required fiber content information shall appear in type or lettering of equal size and conspicuousness; such as for example:

Distributed by:

John Q. Doe Co., Inc.,
New York, NY.

Made of

60% WOOL

40% RECYCLED WOOL

EXCLUSIVE OF ORNAMENTATION

Made in U.S.A.

Provided, however, that the required name or registered identification number may appear on the reverse side of the label if it is plainly legible,

conspicuous and accessible, and provided further, that the required name or registered identification number may be conspicuously set out on a separate label which is prominently and conspicuously displayed in immediate conjunction with, or in close proximity to the label containing the other required information, in accordance with the requirements of § 300.21. Where only one end of a cloth label is sewn to the product in such a manner that both sides of the label are readily accessible to the prospective purchaser, the required fiber content information may appear on the reverse side of the label if the front side of such label clearly and conspicuously shows the wording *Fiber Content on Reverse Side*. On products as to which sectional disclosure is used, an additional non-deceptive label may be used showing the complete fiber content information with percentages as to a particular section or area of the product and specifying the section or area referred to.

§ 300.31 Maintenance of records.

(a) Pursuant to the provisions of section 6 of the Act, every manufacturer of a wool product subject to the Act, irrespective of whether any guaranty has been given or received, shall maintain records showing the information required by the Act and Regulations with respect to all such wool products made by such manufacturer. Such records shall show:

(1) The fiber content of the product specified in section 4(a)(2)(A) of the Act.

(2) The maximum percentage of the total weight of the wool product of any non-fibrous loading, filling or adulterating matter as prescribed by section 4(a)(2)(B) of the Act.

(3) The name, or registered identification number issued by the Commission, of the manufacturer of the wool product or the name or registered identification number of one or more persons subject to section 3 of the Act with respect to such wool product.

(4) The name of the country where the wool product was processed or manufactured as prescribed by sections 300.25a and/or .25b.

(b) Any person substituting labels shall keep such records as will show the information on the label removed and the name or names of the person or persons from whom the wool product was received.

(c) The purpose of these records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished

product. The records shall be preserved for at least three years.

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

The authority citation for Part 301 continues to read as follows:

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

The Commission is amending Part 301 of Title 16 of the Code of Federal Regulations by revising § 301.19(l) and 301.41 to read as follows:

§ 301.19 Pointing, dyeing, bleaching or otherwise artificially coloring.

(l) Any person subject to this section who incorrectly marks or fails to mark fur pelts as provided in paragraphs (i) and (j) of this section shall be deemed to have misbranded such products under section 4(l) of the Act. Any person subject to this section who furnishes a false or misleading affidavit under paragraph (k) of this section or fails to give the notice required by paragraph (k) of this section shall be deemed to have neglected and refused to maintain the records required by section 8(d) of the Act.

(1) In connection with paragraph (h) of this section, the following method may be used for detection of parts per million of iron and copper in hairs from fur pelts including hairs from mink pelts. Procedure for detection of parts per million of iron and copper in hairs from fur pelts including mink hairs.

(2) A recommended method for preparation of samples would be:— Carefully pluck hair samples from 10 to 15 different representative sites on the pelt or garment. This can best be accomplished by using a long nose stainless steel pliers with a tip diameter of 1/16 inch. The pliers should be inserted at the same angle as the guard hairs with the tip opened to 1/4 inch. After contact with the hide, the tip should be raised about 1/4 inch, closed tightly and pulled quickly and firmly to remove the hair.

(3) Place an accurately weighed sample of approximately .1000 grams of mink hair into a beaker with 20 ml. concentrated nitric acid. Evaporate just to dryness on a hot plate.

(4) If there is any organic matter still present, add 10 ml. of concentrated nitric acid (see paragraph 7) and again evaporate just to dryness on a hot plate. This step should be repeated until the nitric acid solution becomes clear to light green. Add 10 ml. of 1% hydrochloric acid to the dried residue in

the beaker. Warm on a hot plate to insure complete solution of the residue.

(5) A recommended analytical procedure would be atomic absorption spectrophotometry. In testing for iron, the atomic absorption instrument must have the capability of a 2 angstrom band pass at the 2483 Å line. When analyzing for iron the air-acetylene flame should be as lean as possible.

(6) A reagent blank should be carried through the entire procedure as outlined above and the final results corrected for the amounts of iron and copper found in the reagent blank.

(7) If facilities are available for handling perchloric acid, a preferred alternate to the additional nitric acid treatment would be to add 2 ml. of perchloric acid and 8 ml. of nitric acid, cover the beaker with a watch glass and allow the solutions to become clear to light green before removal of the watch glass and evaporation just to dryness.

§ 301.41 Maintenance of records.

(a) Pursuant to section 3(e) and section 8(d)(1), of the Act, each manufacturer or dealer in fur products or furs (including dressers, dyers, bleachers and processors), irrespective of whether any guaranty has been given or received, shall maintain records showing all of the required information relative to such fur products or furs in such manner as will readily identify each fur or fur product manufactured or handled. Such records shall show:

(1) That the fur product contains or is composed of natural, pointed, bleached, dyed, tip-dyed or otherwise artificially colored fur, when such is the fact;

(2) That the fur product contains used fur, when such is the fact;

(3) The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur;

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

(5) The name of the country of origin of any imported furs used in the fur products;

(6) The name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture, import, sell, advertise, offer, transport or distribute the fur product in commerce.

(7) The item number assigned, or reassigned, to each fur or fur product as set out in § 301.40

(b) The purpose of the records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw

material through processing to finished product. The records shall be preserved for at least three years.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

The authority citation for Part 303 continues to read as follows:

Authority: 15 U.S.C. 70 (et seq.)

The Commission is amending Part 303 of Title 16 of the Code of Federal Regulations by revising §§ 303.16(a) and 303.39(a) to read as follows:

§ 303.16 Arrangement and disclosure of information on labels.

(a) The information with respect to textile fiber products required to be shown and displayed upon the label shall be that which is required by the Act and Regulations. The required information may appear on any label attached to the textile fiber product, provided all the pertinent requirements of the Act and Regulations are met and so long as the combination of required information and non-required information is not misleading. The required information shall include the following:

(1) The generic names and percentages by weight of the constituent fibers present in the textile fiber product, exclusive of permissive ornamentation, in amounts of five per centum or more and any fibers disclosed in accordance with § 303.3(b) shall appear in order of predominance by weight with any percentage of fiber or fibers required to be designated as other fiber or other fibers appearing last.

(2) The name, provided for in § 303.19, or registered identification number issued by the Commission, of the manufacturer or of one or more persons marketing or handling the textile fiber product.

(3) The name of the country where such product was processed or manufactured, as provided for in § 303.33.

* * * * *

§ 303.39 Maintenance of records.

(a) Pursuant to the provisions of section 6 of the Act, every manufacturer of a textile fiber product subject to the Act, irrespective of whether any guaranty has been given or received, shall maintain records showing the information required by the Act and Regulations with respect to all such textile fiber products made by such manufacturer. Such records shall show:

(1) The generic names and percentages by weight of the constituent

fibers present in the textile fiber product, exclusive of permissive ornamentation, in amounts of five per centum or more.

(2) The name, provided for in § 303.19, or registered identification number issued by the Commission, of the manufacturer or of one or more persons marketing or handling the textile fiber product.

(3) The name of the country where such product was processed or manufactured as provided for in § 303.33.

The purpose of the records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished product.

* * * * *

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-18698 Filed 8-17-88; 8:45 am]

BILLING CODE 6750-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revisions to Freedom of Information Act (FOIA) Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This rule redesignates the positions responsible for handling and determining initial requests and administrative appeals under the FOIA to reflect TVA organizational changes. This rule was not published in proposed form since it relates to agency organization, procedure, and practice. Since this rule is nonsubstantive, it is being made effective immediately.

EFFECTIVE DATE: August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Gilbert D. Francis, Jr., (615) 632-6000.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of information, Privacy, Sunshine Acts.

For the reasons set forth in the preamble, Title 18, Chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for Part 1301 continues to read as follows:

Authority: 48 Stat. 58, as amended; 16 U.S.C. 831-831dd, unless otherwise noted.