[Docket No. 10171; Amdts. Nos. 121-74; 135-27]

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

Pilot in Command Operating Experience

The purpose of this amendment to Part 121 of the Federal Aviation Regulations is to permit a check pilot designated as pilot in command to occupy an observer's seat while a transitioning pilot qualifying for service as pilot in command occupies a pilot station, if after at least two takeoffs and landings the check pilot is satisfied that the qualifying pilot is competent to perform the duties of a pilot in command. The amendment is also applicable to air taxi operations using large aircraft, as provided in § 135.2.

This amendment is based on a notice of proposed rule making, Notice 70-36, published in the FEDERAL REGISTER on September 15, 1970 (35 F.R. 14463). Four commentators responded to the notice and their views, as well as the response of the FAA thereto, are discussed below.

As stated in the notice, this amendment is based on a petition for rule making submitted by United Air Lines, Inc. (United), requesting an amendment to § 121.434 to give check pilots greater discretion in the selection of the seat to be occupied by them during their supervision of air carrier pilots acquiring initial operatng experence. As a result of the FAA examination of the petition and relevant safety considerations, the agency developed the proposals which make up the substance of this amendment.

Those commentators opposed to the notice recommended that check pilot discretion should extend beyond the transition situation to encompass initially qualifying pilots in command and second in command pilots upgrading to pilot in command. These commentators disagreed with the FAA rationale limiting check pilot discretion to the transitioning situation, namely that in the initial and upgrading situations a pilot will not have been exposed to the operating environment of a pilot in command of a Part 121 operation. It was their opinion that inasmuch as pilots in the initial and upgrade situation will have received their necessary ratings and pilot-in-command training before the operating experience phase, they will have sufficient knowledge of, and the ability to perform, the responsibilities of the position and that the check pilot, with his expertise, will be able to determine whether the qualifying pilot should be allowed to occupy a pilot station.

We consider this argument to be only partially valid, for until a pilot has experienced the environment of a pilot in command in line operations for the length of time prescribed by § 121.434, we question whether he has sufficient training to adequately assume the responsibilities of a pilot in command in Part 121 operations. It was for this reason that the proposals in the notice extended only to pilots in command of one airplane within a group transitioning to another airplane of the same group.

In further support of broad check pilot discretion in determining when a pilot is capable of occupying a pilot station, several commentators argued that the check pilot is in the best position to determine when a pilot (whether in the initial, upgrade, or transition situation) is ready to assume control of the airplane as pilot in command. The FAA recognizes the expertise of check pilots to determine the ability of pilots to assume the responsibilities of the positions for which they are training. However, the agency does not believe that the check pilot function should be performed without required standards. In this case, the requirements of current § 121.434, with the change made by this amendment, are considered necessary to insure the safe conduct of the operating experience phase of pilot flight training.

One commentator objected to the notice on the grounds that it confused the regulations by changing the clear language of § 121.543, requiring that each flight crewmember on the flight deck remain at his station, to include an exception covering the situation where a check pilot occupies an observer's seat while the pilot in command trainee he is checking is obtaining his transition flight training from a pilot seat. We agree that an amendment to § 121.543 is unnecessary inasmuch as the amendment to § 121.434 adopted herein clearly specifies when a check pilot serving as pilot in command is authorized to occupy an observer's seat and while occupying that seat he is considered to be at his station as required by current § 121.543. Accordingly, the proposal to amend § 121.543 is not adopted.

It should be noted that several comments received made recommendations that were beyond the scope of the notice and cannot, therefore, be considered as a part of this action. However, the FAA will examine these recommendations and if it appears that they will enhance the effectiveness of training without derogating from safety, the agency will undertake the necessary rule making to implement them.

Section 121.431 is amended to incorporate in Subpart O the airplane groups and terms and definitions prescribed in Subpart N in order to maintain consistency between the Subparts. This change is editorial only.

Finally, as proposed in the Notice, § 121.434(b)(3) is amended to permit operating experience to be obtained during ferry flights or proving flights in the case of airplanes new to the certificate holder and prior to their being placed in service. This amendment is made to assist certificate holders in the qualification of the initial pilot in command of such aircraft.

In consideration of the foregoing, Part 121 of the Federal Aviation Regulations is amended, effective July 30, 1971, as follows:

1. By amending § 121.431 to read as follows:

§ 121.431 Applicability.

(a) This subpart prescribes crewmember qualifications for all certificate holders except where otherwise specified.

(b) For the purpose of this subpart, the airplane groups and terms and definitions prescribed in § 121.400 of this part apply.

2. By amending § 121.434(b)(3) and adding a flush paragraph at the end of § 121.434(c)(1) to read as follows:

§ 121.434 Operating experience.

* * * * *

(b) * * *

(3) The experience must be acquired in flight during operations under this part. However, in the case of an aircraft not previously used by the certificate holder in operations under this part, operating experience acquired in the aircraft during proving flights or ferry flights may be used to meet this requirement.

* * * * *

(c) * * *

(1) * * *

During the time that a qualifying pilot in command is acquiring the operating experience in this subparagraph a check pilot who is also serving as the pilot in command must occupy a pilot station. However, in the case of a transitioning pilot in command the check pilot serving as pilot in command may occupy the observer's seat, if the transitioning pilot has made at least two takeoffs and landings in the type airplane used, and has satisfactorily demonstrated to the check pilot that he is qualified to perform the duties of a pilot in command of that type of airplane.

* * * * *

(Secs. 313(a), 601, 604, 607, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1424, 1427; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on June 21, 1971.

J. H. SHAFFER,
Administrator.

[FR Doc. 71-9190 Filed 6-29-71;8:46 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER E—RULES, REGULATIONS, STATEMENTS OF GENERAL POLICY OR INTERPRETATIONS UNDER THE FAIR PACKAGING AND LABELING ACT

PART 502—REGULATIONS UNDER SECTION 5(C) OF THE FAIR PACKAGING AND LABELING ACT

On May 19, 1970 (35 F.R. 7705), and on November 24, 1970 (35 F.R. 18001),

notices of proposed rule making pursuant to section 5(c) of the Fair Packaging and Labeling Act were published in the FEDERAL REGISTER. These proposals would regulate the use of "cents-off", "introductory offer", and "economy size" representations imprinted on packaged or labeled consumer commodities. The proposals were based upon both past and current observations in the consumer commodity market which disclosed that the use of such representations have resulted in widespread confusion and deception of the purchasing public necessitating regulations of general application to prevent deception of consumers and to facilitate value comparisons if these representations are to be used in the future. After publication, all interested persons were afforded the opportunity to submit their written data, views, and arguments on each proposal.

The Commission has now considered all matters of fact, law, policy and discretion, including the data, views, and arguments presented by interested persons in response to the published proposals and has determined that the adoption of the rules and statements of basis and purpose set forth herein are in the public interest and are fully justified by the information available to it.

A. *"Cents-off" representations.* The consumer believes a "cents-off" representation means that the commodity so labeled is being offered for sale at a reduction of the represented amount from the ordinary and customary price at which the commodity is regularly sold to the public by the retailer.

Hearings before the Committee on Commerce in the U.S. Senate, 89th Congress, first session, and before the Committee on Interstate and Foreign Commerce, House of Representatives, 89th Congress, second session, reveal that there was sufficient evidence of consumer deception and confusion in the use of these representations to warrant inclusion in the initial bills on the Fair Packaging and Labeling Act of an outright prohibition of the use of "cents-off" and "economy size" representations on packages and labels of consumer commodities. After introduction and hearings on the initial bills, testimony of the various representatives of Federal Agencies expressed the view that if the use of these representations was properly regulated, the consumer could reap the benefits of nondeceptive retail price reductions made for promotional purposes. As a consequence, the House of Representatives Bill (H.R. 15440) and the Senate Bill (S. 985) were reported out of Committee with the present provisions that responsible agencies could regulate these representations. Senator Hart in summing up the provision as finally reported out by the Conference Committee said, "Cents-off claims and economy designations can now be regulated. To the consumer, this means that economy size should be more economical for the housewife, not just the manufacturer; that cents-off should relate to an established price and that a manufacturer should not be allowed to use a cents-off designation to hide an actual rise in the price of the product if computed on a per ounce basis."

In January 1965 and March 1966 the Commission's staff completed investigations involving packaging and pricing concepts utilizing "cents-off" claims. Additional observations and reports of "cents-off" utilization have been collected by the Commission's staff since those periods. Misrepresentations occur either when the commodity so labeled does not have an established ordinary and customary retail price or when the commodity is sold so frequently or in such great volume with the "cents-off" representation that the "cents-off" price becomes the ordinary and customary price of the commodity. It was also revealed that some manufacturers have made all of their sales on a "cents-off" basis for periods of time in excess of a year and that others have repeated the "cents-off" offer so frequently that most of their output has been sold at the reduced price.

In response to the invitation contained in the proposal, sixty-two (62) comments were received from Federal and State officials, private citizens and industry representatives. Decisions respecting the various sections of the published proposed rule after consideration of all comments are as follows:

(1) Proposed § 502.1 is revised to encompass the scope of all regulations which may be written under the authority of section 5(c) of the Act. Note that introductory offers, previously referred to in proposed § 502.1(b), are no longer included under the regulations concerning "cents-off" representations. Regulations governing use of introductory offers are issued as a separate § 502.101 under "Retail Sale Price Representations".

(2) Proposed § 502.2 is revised to include the definition of terms common to all regulations to be included under Part 502. The phrase "a reasonably substantial period of time" as used to define the term "ordinary and customary price" has been further defined as "a 30-day period".

(3) Section 502.3 of the regulations is new and contains the broad prohibitions appropriate to Part 502.

(4) Section 502.100 contains the regulations specifically addressing the use of "cents-off" representations. Paragraph (a) defines the term "cents-off" representation.

(5) Proposed § 502.3 now appears as paragraph (b) of § 502.100. The requirement that the amount of the "cents-off" be substantial (i.e., at least 8 percent) has been deleted. Since the precise amount of the "cents-off" reduction must appear on the package in each case, the consumer will have adequate information upon which to make a value comparison. An optional method of informing the consumer of the ordinary and customary retail price of the "cents-off" marked commodity has been provided to ease the administrative burden at the retail level. The packager or labeler must still imprint the three-price format on the package but when he sells the product at retail he may either complete the three pricing blanks or he may display the pricing information on a sign, placard or shelf-marker contiguous to the retail display of the commodity. Either the completed three-price format or the display card will insure that the consumer is fully informed on all pricing details.

The sections designed to control frequency, duration and volume have been revised to increase flexibility of employment of the promotion but still retain sufficient limits to preclude any misrepresentation to the consumer. Volume limitation is expanded to 50 percent and this amount can be sold in one promotional effort not to exceed a 6-month period in any 1 year or it may be sold in two periods or three periods within the year but the total time of all promotional distribution may not exceed the 6-month limitation. In addition, at least thirty (30) days must elapse between successive promotions. This period insures the establishment of an ordinary and customary price and equates to the definition of reasonably substantial period of time as used in context with ordinary and customary price. An explanation of the 12-month period to be used and a description of proper volume computation has been included.

(6) Proposed § 502.3(b) now appears as § 502.100(c) and is revised in language to include the optional pricing concepts using the three-price format or the display card.

(7) Proposed § 502.3(c) is deleted.

(8) Proposed § 502.4 now appears as § 502.100(d) and is revised to require maintenance of invoices for 1 year beyond the prior 12-month period of "cents-off" employment.

B. *Introductory offers.* The consumer believes that an "introductory offer" representation on a package or label of a consumer commodity means there is a newly developed product being introduced into the market or a consumer commodity being newly introduced into a given trade area. When combined with a "cents-off" representation, the consumer believes that the commodity so labeled is being offered for sale at a reduction of the represented amount from the ordinary and customary price for which the commodity will be regularly sold to the public by the retailer for a reasonably substantial period of time immediately following the period of introductory offer.

In the past the Commission has discussed in advisory opinions the use of the word "new" as it relates to a consumer product. The word "new" may be properly used only when the product so described is either entirely new or has been changed in a functionally significant and substantial respect. A product may not be called "new" when only the package has been altered or some other change is made which is functionally insignificant or insubstantial. In addition, the Commission has stated that any claim that a product was "new" for a period of time longer than 6 months would be questioned unless exceptional

circumstances to warrant a period longer than 6 months were shown to exist. Since the consumer equates "introductory offers" with new products or products new to their trade area and the confusion and deception of "cents-off" representations are present in conjunction with employment of introductory offers, the Commission proposed regulation to prevent deception and facilitate value comparisons when using "cents-off" with introductory offers.

Decisions respecting § 502.1(b) of the published proposed rule after consideration of all comments are as follows:

(1) Section 502.1(b) now appears as § 502.101 to conform with the reorganization of Part 502 contained herein.

(2) The initial part of the regulation invokes the previously announced principles involving the use of the word "new" when introductory offers are used in conjunction with consumer commodities.

(3) The final portion of the regulation permits the use of the term "cents-off" in conjunction with introductory offers under specific conditions which provide for authenticity of price representations made to the consumer.

C. Economy size representations. The Commission finds that the consumer believes that terms such as "economy size", "economy pack", "budget pack", "bargain size", "value size", and the like, when placed upon a package or label of a consumer commodity, represent that a retail sale price advantage is being accorded to the purchaser thereof by reason of the size of that package or the quantity of its contents.

Historically, House of Representatives and Senate Committee hearings on the Fair Packaging and Labeling Act followed the path as enumerated herein under "cents-off" representations, clearly eliciting evidence of past practices wherein use of "economy size" representations were both deceptive and confusing to the consumer. Congress initially proposed prohibition of "economy size" designations but ultimately chose regulation of this area by permitting regulation to avoid deception rather than an outright ban.

In May of 1970 the Commission's staff completed a nationwide survey of "economy size" representations used on packaged and labeled consumer commodities. The staff found the following:

(a) In many instances when an economy claim was made, the price at which the commodity was offered to the consumer did not provide the consumer with a savings when compared to other packages of the same commodity.

(b) There were some instances discovered where the price of the economy marked packages were, in fact, higher than other regularly marked packages of the same product.

(c) Instances were found where the only package of a product offered to the consumer was that bearing an economy claim.

(d) Situations were observed where several sizes of the same packaged product bore economy claims.

There were twenty-five (25) comments from consumers, industry, and government sources submitted in response to the invitation published with the proposed regulation. After consideration of all comments, decisions concerning the various sections of the previously published proposed rule are as follows:

(1) Proposed § 502.6 now appears as § 502.102. The definition of "economy size" has been limited to those terms which clearly contain value representations. Terms which are used purely to denote size characterizations have been excluded and will be regulated when necessary under section 5(c)(1) of the Act.

(2) Proposed § 502.6 has been omitted. The price used for purposes of economy size claims is explained in § 502.102(b)(3). To the specific request of the Commission that comments address what should constitute a substantial reduction for the purposes of this paragraph, a great diversity of views were received. The opinions covered the expense of suggestion that no specific definition be used because of the great variance of commodities involved, through the suggestion that substantial reduction be at least 25 percent. The Commission has concluded that at the outset of this rule there should be a minimum established which will both guide the manufacturer in his labeling and provide the consumer with basic reliability that an economy claim is at least a reduction of the regular price in recognizable percentage. Thus, the Commission has amended this section by adding the words "i.e., at least 5 percent" following the words "substantially reduced".

(3) Subsection (c) of proposed § 502.7 has been deleted.

(4) Proposed § 502.8 now appears as § 502.102(d) and is revised to require maintenance of invoices for 1 year.

Therefore, based on consideration of the comments received, the Commission has concluded that the proposed regulations, with some modifications in language as previously explained, should be adopted.

Accordingly, pursuant to the provisions of the Fair Packaging and Labeling Act (Sections 5, 6, 80 Stat. 1299, 1300; 15 U.S.C. 1454, 1455); Subchapter E is amended by adding thereto the following new Part 502:

SCOPE

Sec.

502.1 Scope of the regulations in this part.

DEFINITIONS

502.2 Terms defined.

GENERAL REQUIREMENTS

502.3 Prohibited acts.

CHARACTERIZATION OF PACKAGE SIZE

502.4—502.99 [Reserved]

RETAIL SALE PRICE REPRESENTATIONS

502.100 "Cents-off" representations.
502.101 Introductory offers.
502.102 "Economy size".
502.103—502.199 [Reserved]

COMMON NAME AND INGREDIENT LISTING

502.200—502.299 [Reserved]

NONFUNCTIONAL-SLACK-FILL

502.300—502.399 [Reserved]

AUTHORITY: The provisions of this Part 502 issued under sections 5, 6, 80 Stat. 1299, 1300; 15 U.S.C. 1454, 1455.

SCOPE

§ 502.1 Scope of the regulations in this part.

The regulations in this part establish requirements for labeling of consumer commodities with respect to use of package size characterizations, retail sale price representations, and common name and ingredient listing. Additionally, the regulations in this part establish criteria to prevent nonfunctional-slack-fill of packages containing consumer commodities.

DEFINITIONS

§ 502.2 Terms defined.

As used in this part, unless the context otherwise specifically requires:

(a) The terms "Act", "regulation" or "regulations", "consumer commodity", "package", "label", "person", "commerce", "principal display panel", and "random package" have the same meaning as those terms are defined under Part 500 of this chapter.

(b) The term "packager" and "labeler" means any person engaged in the packaging or labeling of any consumer commodity for distribution in commerce or any person, other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire, engaged in the distribution in commerce of any packaged or labeled consumer commodity; except persons engaged in business as wholesale or retail distributors of consumer commodities are not included unless such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(c) The terms "ordinary and customary" and "regular" when used with the term "price" means the price at which a consumer commodity has been openly and actively sold in the most recent and regular course of business in a particular market or trade area for a reasonably substantial period of time, i.e., a 30-day period. For consumer commodities which fluctuate in price, the ordinary and customary price shall be the lowest price at which any substantial sales were made during the aforesaid 30-day period.

GENERAL REQUIREMENTS

§ 502.3 Prohibited acts.

(a) No person engaged in the packaging or labeling of any consumer commodity for distribution in commerce, and no person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, shall distribute or cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed

to that commodity a label, which does not conform to the provisions of the Act and of the regulations in this part.

(b) Persons engaged in business as wholesale or retail distributors of consumer commodities shall be subject to the Act and the regulations in this part to the extent that such persons are engaged in the packaging or labeling of consumer commodities, or prescribe or specify by any means the manner in which such consumer commodities are packaged or labeled.

CHARACTERIZATION OF PACKAGE SIZE

§§ 502.4–502.99 [Reserved]

RETAIL SALE PRICE REPRESENTATIONS

§ 502.100 "Cents-off" representations.

(a) The term "cents-off" representation means any printed matter consisting of the word "cents-off" or words of similar import, placed upon any package containing a consumer commodity or placed upon any label affixed to such commodity, stating or representing by implication that the commodity is being offered for sale at a price lower than the ordinary and customary retail sale price.

(b) Except as set forth in § 502.101, the package or label of a consumer commodity shall not have imprinted thereon by a packager or labeler a "cents-off" representation unless:

(1) The commodity has been sold by the packager or labeler at an ordinary and customary price in the most recent and regular course of business in the trade area in which the "cents-off" promotion is made, either to the trade in the event such commodity is not sold at retail by the packager or labeler, or to the public in the event such commodity is sold at retail by the packager or labeler.

(2) The packager or labeler sells the commodity so labeled (either to the trade in the event such commodity is not sold at retail by the packager or labeler, or to the public in the event such commodity is sold at retail by the packager or labeler) at a reduction from his ordinary and customary price, which reduction is at least equal to the amount of the "cents-off" representation imprinted on the commodity package or label.

(3) The packager or labeler imprints on the package or label in the usual pricing spot and in a clear and convenient format the following:

Regular price _____
_____ Cents-Off
You pay _____

The packager or labeler who does not sell the commodity at retail must fill in the blank next to "cents-off" with the amount of the represented price reduction. The packager or labeler who sells the commodity at retail must fill in all three blanks, except, in lieu of completing the three blanks, he may display the identical information on a sign, placard, or shelf-marker placed in a conspicuous and prominent position contiguous to the retail display of the commodity.

(4) Any "cents-off" representation, used in addition to that prescribed in subparagraph (3) of this paragraph, is limited to the phrase "_____ cents-off the regular retail price".

(5) The packager or labeler:

(i) Does not initiate more than three "cents-off" promotions of any single size commodity in the same trade area within a 12-month period;

(ii) Allows at least 30 days to lapse between "cents-off" promotions of any particular size packaged or labeled commodity in a specific trade area; and

(iii) Does not sell any single size commodity so labeled in a trade area for a duration in excess of 6 months within any 12-month period.

(6) Sales by the packager or labeler of any single size commodity so labeled in a trade area do not exceed in volume fifty percent (50%) of the total volume of sales of such size commodity in the same trade area during any 12-month period. The 12-month period used by the packager or labeler may be the calendar, fiscal, or market year provided the identical period is applied in this subparagraph and subparagraph (5) of this paragraph. Volume limits may be calculated on the basis of projections for the current year but shall not exceed 50 percent of the sales for the preceding year in the event actual sales are less than the projection for the current year.

(c) A packager or labeler will not make a "cents-off" promotion available in any circumstances where he knows or should have reason to know that it will be used as an instrumentality for deception or for frustration of value comparison, e.g., where the retailer charges a price which does not fully pass on to consumers the represented price reduction; where the retailer fails to fill in the blanks in the prescribed pricing spot clearly and correctly; or where the retailer fails to conspicuously and clearly display the pricing information in lieu of filling in the blanks on the pricing spot. Nothing in this rule, however, should be construed to authorize or condone the illegal setting or policing of retail prices by a packager or labeler.

(d) A packager or labeler who sponsors a "cents-off" promotion shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection by duly authorized representatives of this Commission and shall be retained for a period of 1 year subsequent to the end of the year (calendar, fiscal, or market) in which the "cents-off" promotion occurs.

§ 502.101 Introductory offers.

(a) The term "introductory offer" means any printed matter consisting of the words "introductory offer" or words of similar import, placed upon a package containing any new commodity or upon any label affixed to such new commodity, stating or representing by implication that such new commodity is offered for retail sale at a price lower than the anticipated ordinary and customary retail sale price.

(b) The package or label of a consumer commodity may not have imprinted thereon by a packager or labeler an introductory offer unless:

(1) The product contained in the package is new, has been changed in a functionally significant and substantial respect, or is being introduced into a trade area for the first time.

(2) The packager or labeler clearly and conspicuously qualifies each offer on a package or label with the phrase "Introductory Offer."

(3) The packager or labeler does not sell any commodity so labeled in a trade area for a duration in excess of 6 months.

(4) At the time of making the introductory offer promotion, the packagers or labeler intends in good faith to offer the commodity, alone, at the anticipated ordinary and customary price for a reasonably substantial period of time following the duration of the introductory offer promotion.

(c) The package or label of a consumer commodity shall not have imprinted thereon by a packager or labeler an introductory offer in the form of a "cents-off" representation unless, in addition to the requirements in paragraph (b) of this section:

(1) The packager or labeler clearly and conspicuously and in immediate conjunction with the phrase "Introductory Offer" imprints the phrase "_____ cents-off the after introductory offer price".

(2) The packager or labeler sells the commodity so labeled (either to the trade in the event such commodity is not sold at retail by the packager or labeler, or to the public in the event such commodity is sold at retail by the packager or labeler) at a reduction from his anticipated ordinary customary price, which reduction is at least equal to the amount of the reduction from the after introductory offer price representation on the commodity package or label.

(d) A packager or labeler will not make an introductory offer with a "cents-off" representation available in any circumstance where he knows or should have reason to know that it will be used as an instrumentality for deception or for frustration of value comparison, e.g., where the retailer charges a price which does not fully pass on to consumers the represented price reduction. Nothing in this rule, however, should be construed to authorize or condone the illegal setting or policing of retail prices by a packager or labeler.

(e) A packager or labeler who sponsors an introductory offer shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection open to inspection by duly authorized representatives of this Commission and shall be retained for a period of 1 year subsequent to the period of the introductory offer.

§ 502.102 "Economy size."

(a) The term "economy size" means any printed matter consisting of the

words "economy size," "economy pack," "budget pack," "bargain size," "value size," or words of similar import placed upon any package containing any consumer commodity or placed upon any label affixed to such commodity, stating or representing directly or by implication that a retail sale price advantage is accorded the purchaser thereof by reason of the size of that package or the quantity of its contents.

(b) The package or label of a consumer commodity may not have imprinted thereon an "economy size" representation unless:

(1) The packager or labeler at the same time offers the same brand of that commodity in at least one other packaged size or labeled form.

(2) The packager or labeler offers only one packaged or labeled form of that brand of commodity labeled with an "economy size" representation.

(3) The packager or labeler sells the commodity labeled with an "economy size" representation (either to the trade in the event such commodity is not sold at retail by the packager or labeler, or to the public in the event such commodity is sold at retail by the packager or labeler), at a price per unit of weight, volume, measure, or count which is substantially reduced (i.e., at least 5 percent) from the actual price of all other packaged or labeled units of the same brand of that commodity offered simultaneously.

(c) A packager or labeler will not make an "economy size" package available in any circumstances where he knows that it will be used as an instrumentality for deception, e.g., where the retailer charges a price which does not pass on to the consumer the substantial reduction in cost per unit initially granted by the packager or labeler. Nothing in this rule, however, should be construed to authorize or condone the illegal setting or policing of retail prices by a packager or labeler.

(d) A packager or labeler who sponsors an "economy size" package shall prepare and maintain invoices or other records showing compliance with paragraph (b) of this section. The invoices or other records required by this Section shall be open to inspection by duly authorized representatives of this Commission and shall be retained for one year.

§§ 502.103–502.199 [Reserved]

COMMON NAME AND INGREDIENT LISTING

§§ 502.200–502.299 [Reserved]

NONFUNCTIONAL-SLACK-FILL

§§ 502.300–502.399 [Reserved]

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Secretary, Federal Trade Commission, Washington, D.C. 20580, written objections thereto, specifying with particularity the provisions of the order deemed objectionable, stating the grounds therefor, and requesting a public hearing upon such objections. Objections will be deemed sufficient to warrant the holding of a public hearing only: (1) If they establish that the objector will be adversely affected by the order; (2) if they specify with particularity the provisions of the order to which objection is taken; and (3) if they are supported by reasonable grounds which if valid and factually supported may be adequate to justify the relief sought. Anyone who files objections which are not deemed by the Commission sufficient to warrant the holding of a public hearing will be promptly notified of that determination.

As soon as practicable after the time for filing objections has expired, the Commission will publish a notice in the FEDERAL REGISTER specifying those parts of the order which have been stayed by the filing of objections or, if no objections sufficient to warrant the holding of a public hearing have been filed, stating the fact. This order shall become effective on December 31, 1971, except as to any provisions that may be stayed by the filing of valid objections.

By direction of the Commission dated June 21, 1971.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-9209 Filed 6-29-71;8:48 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER A—GENERAL

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

"Cents-Off" and "Economy Size" Package Promotions

In the matter of establishing new enforcement regulations (21 CFR 1.1d, 1.1e) to control "cents-off," "economy size," and other savings representations:

A notice of proposed rulemaking in the above-identified matter was published in the FEDERAL REGISTER of May 21, 1970 (35 F.R. 7811), and provided for the filing of comments within 60 days. The comment time was extended to September 1, 1970, by a notice published July 18, 1970 (35 F.R. 11591).

In response, 54 comments were received. On the basis of these comments and other relevant information, the Commissioner of Food and Drugs concludes that:

1. Contentions that the Fair Packaging and Labeling Act grants authority to establish "cents-off" regulations only on a commodity-by-commodity basis are without merit. It was clearly the intent of Congress to control savings representation abuses regardless of their form or the particular consumer commodity they appear upon at any given time. The history of abuses and complaints encompasses the greater spectrum of consumer commodities subject to the Fair Packaging and Labeling Act; therefore, the need for control has been clearly established and the best interest of both the consumer and the regulated industry will be served by a single issuance to control such savings representations.

2. The Fair Packaging and Labeling Act does not provide the authority to abolish "cents-off" promotions, and the proposed regulation would have no such effect. For those involved in savings promotions, § 1.1d will provide options that will not hamper commerce and yet will provide the consumer with information required to make rational purchases.

3. Regarding whether the Fair Packaging and Labeling Act authorizes regulating "cents-off" and related promotions in the labeling of consumer commodities: While the Fair Packaging and Labeling Act specifically provides for regulations applicable to the label and package, the foods, drugs, and cosmetics involved also are subject to the label and labeling requirements of the Federal Food, Drug, and Cosmetic Act. Application of the proposed "cents-off" regulation both to labels and labeling is necessary to make label and labeling claims consistent, to prevent misleading representations in labeling that could not be used on the label, and to ensure adequate consumer protection in situations where savings representations might be abused by labeling; for example, contiguous displays, placards, etc.

4. Regarding the authority to regulate price-marking activities at the retail level: The Fair Packaging and Labeling Act specifically provides that its prohibitions apply to retail distributors to the extent that such persons are engaged in labeling consumer commodities or in prescribing or specifying the manner in which such commodities are packaged or labeled. Such control is imperative since the retailer provides the last responsible link in the chain of commerce to ensure that the consumer is in fact receiving the savings being offered.

5. Proposed § 1.1d(a) should be changed as set forth below to amplify the meaning of the phrase "other savings representations" as it relates to the label or labeling of consumer commodities; however, due to the variety of savings representations that may be utilized in the marketplace, the applicability of a specific promotion to these proposed regulations may of necessity be adjudged on a case-by-case basis as the need arises.

6. Proposed § 1.1d(a) should be changed as set forth below to clarify the time that records are required to be maintained for all successive promotions occurring within a 12-month period.

7. Regarding the proposed requirements and format for displaying savings representations on the label or labeling of consumer commodities: Proposed § 1.1d(b) should be changed as set