of that which is represented to be "Free". In other words, when the purchaser is told that an article is "Free" to him if another article is purchased, the word "Free" indicates that he is paying nothing for that article and no more than the regular price for the other. Thus, a purchaser has a right to believe that the merchant will not directly and immediately recover, in whole or in part, the cost of the free merchandise or service by marking up the price of the article which must be purchased, by the substitution of inferior merchandise or service, or otherwise.

(2) The term "regular" when used with the term "price", means the price, in the same quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold the product or service in the geographic market or trade area in which he is making a "Free" or similar offer in the most recent and regular course of business, for a reasonably substantial period of time, i.e., a 30-day period. For consumer products or services which fluctuate in price, the "regular" price shall be the lowest price at which any substantial sales were made during the aforesaid 30-day period. Except in the case of introductory offers, if no substantial sales were made, in fact, at the "regular" price, a "Free" or similar offer would not be proper.

(c) *Disclosure of conditions.* When making "Free" or similar offers all the terms, conditions and obligations upon which receipt and retention of the "Free" item are contingent should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood. Stated differently, all of the terms, conditions and obligations should appear in close conjunction with the offer of "Free' merchandise or service. For example, disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer, is not regarded as making disclosure at the outset. However, mere notice of the existence of a "Free" offer on the main display panel of a label or package is not precluded provided that (1) the notice does not constitute an offer or identify the item being offered "Free", (2) the notice informs the customer of the location, elsewhere on the package or label, where the disclosures required by this section may be found, (3) no purchase or other such material affirmative act is required in order to discover the terms and conditions of the offer, and (4) the notice and the offer are not otherwise deceptive.

(d) *Supplier's responsibilities.* Nothing in this section should be construed as authorizing or condoning the illegal setting or policing of retail prices by a supplier. However, if the supplier knows, or should know, that a "Free" offer he is promoting is not being passed on by a reseller, or otherwise is being used by a reseller as an instrumentality for deception, it is improper for the supplier to continue to offer the product as promoted to such reseller. He should take appropriate steps to bring an end to the deception, including the withdrawal of the "Free" offer.

(e) *Resellers' participation in supplier's offers.* Prior to advertising a "Free" promotion, a supplier should offer the product as promoted to all competing resellers as provided for in the Commission's "Guides for Advertising Allowances and Other Merchandising Payments and Services." In advertising the "Free" promotion, the supplier should identify those areas in which the offer is not available if the advertising is likely to be seen in such areas, and should clearly state that it is available only through participating resellers, indicating the extent of participation by the use of such terms as "some", "all", "a majority", or "a few", as the case may be.

(f) *Introductory offers.* (1) No "Free" offer should be made in connection with the introduction of a new product or service offered for sale at a specified price unless the offeror expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which is was promoted with a "Free" offer.

(2) In such offers, no representation may be made that the price is for one item and that the other is "Free" unless the offeror expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which is was promoted with a "Free" offer.

(g) *Negotiated sales.* If a product or service usually is sold at a price arrived at through bargaining, rather than at a regular price, it is improper to represent that another product or service is being offered "Free" with the sale. The same representation is also improper where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

(h) *Frequency of offers.* So that a "Free" offer will be special and meaningful, a single size of a product or a single kind of service should not be advertised with a "Free" offer in a trade area for more than 6 months in any 12-month period. At least 30 days should elapse before another such offer is promoted in the same trade area. No more than three such offers should be made in the same area in any 12-month period. In such period, the offeror's sale in that area of the product in the size promoted with a "Free" offer should not exceed 50 percent of the total volume of his sales of the product, in the same size, in the area.

(i) *Similar terms.* Offers of "Free" merchandise or services which may be deceptive for failure to meet the provisions of this section may not be corrected by the substitution of such similar words and terms as "gift", "given without charge", "bonus", or other words or terms which tend to convey the impression to the consuming public that an article of merchandise or service is "Free".

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

Promulgated by the Federal Trade Commission, November 16, 1971.

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

[FR Doc.71-16400 Filed 11-9-71;8:49 am]

## PART 410—DECEPTIVE ADVERTISING AS TO SIZES OF VIEWABLE PICTURES SHOWN BY TELEVISION RECEIVING SETS

The Federal Trade Commission pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq., and the provisions of Part I, Subpart B of the Commission's procedures and rules of practice, 16 CFR 1.11, et seq., has conducted a proceeding for the amendment of the Trade Regulation Rule relating to the advertising of television picture sizes (31 F.R. 3342), which rule became effective on January 1, 1967.

Notice of the amendment proceeding was published in the FEDERAL REGISTER on April 21, 1971 (36 F.R. 7536). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views, and arguments as to the proposed amendment and to express their approval or disapproval of the proposed amendment or to recommend revisions thereof.

The Commission has now considered all matters of fact, law, policy and discretion, including the data, views, and arguments submitted for the record by interested parties in response to the notice, as prescribed by law, and has determined that the amended Trade Regulation Rule and the statement of its basis and purpose as set forth herein is in the public interest and should be adopted.

In connection with the sale of television receiving sets, in commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair and deceptive act or practice to use any figure or size designation to refer to the size of the picture shown by a television receiving set or the picture tube contained therein unless such indicated size is the actual size of the viewable picture area measured on a single plane basis. If the indicated size is other than the horizontal dimension of the actual viewable picture area such size designation shall be accompanied by a statement, in close connection and conjunction therewith, clearly and conspicuously showing the manner of measurement.

NOTE 1: For the purposes of this part, measurement of the picture area on a single plane basis refers to a measurement of the distance between the outer extremities (sides) of the picture area which does not take into account the curvature of the tube.

NOTE 2: Any referenced or footnote disclosure of the manner of measurement by means of the asterisk or some similar symbol does not satisfy the "close connection and conjunction" requirement of this part.

Examples of proper size descriptions when a television receiving set shows a 20-inch picture measured diagonally, a 19-inch picture measured horizontally, a 15-inch picture measured vertically, and a picture area of 262 square inches include:

"20 inch picture measured diagonally" or
"19 inch x 15 inch picture" or
"19 inch picture" or
"19 inch" or
"262 square inch picture."

Examples of improper size descriptions of a television set showing a picture of the size described above include:

"21 inch set" or
"21 inch diagonal set" or
"21 inch over-all diagonal—262 square inch picture" or
"Brand Name 21."

(38 Stat. 717, as amended; 15 U.S.C. 41–58)

*Effective date.* This rule, as amended, becomes effective December 10, 1971.

Promulgated: November 10, 1971.

By the Commission.

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

STATEMENT OF BASIS AND PURPOSE

I. *Background of proceeding to amend Rule.* During the compliance program for subject rule, with effective date of January 1, 1967, the need for further clarification of two aspects thereof became apparent. First, the term "single plane" as applied to picture size measurements lacked a precise definition. Secondly, use of the asterisk in effecting the disclosures required by the rule, while consistently held by staff interpretation to be inadequate under the "close connection and conjunction" disclosure requirement of the rule, was not specifically mentioned anywhere in the rule.

The Commission announced its affirmative interest in an industrywide proceeding for amendment of the Trade Regulation Rule relating to the advertising of television picture sizes by publishing in the FEDERAL REGISTER on April 21, 1971, a notice of rule amendment (36 F.R. 7536).

II. *Views regarding the proceeding to amend.* The City of New York, Department of Consumer Affairs, proposed that the amendment be expanded to include provisions to prevent alleged questionable advertising tactics, such as failure to designate picture size, in the case of some less expensive television sets, together with no mention of the manufacturer and other identifying features such as model number, etc.

It was further suggested that the sizes of television pictures should be expressed only in horizontal linear measurements. The Record, which is meager, also contains a letter from a consumer supporting this view.

Although one consumer argued that it is deceptive to specify picture area as the primary indication of size rather than linear picture height, another consumer fully supported the rule as fair not only to the consumer but to the retailer

III. *Summary and conclusions.* The Commission has considered the above arguments and finds that such arguments are not directed to the proposed amendments as such but rather are arguments for revision of the rule proper.

Accordingly, the Commission concludes that such objections fall without the scope of this proceeding and that there is no basis for reconsideration or for a reopening of the initial rule since the arguments advanced were considered in the initial rulemaking proceeding.

IV. *The effective date of the amendment.* The effective date of the amendment will be thirty (30) days after the date of promulgation. The rule, as amended, supercedes the Trade Regulation Rule relating to the deceptive advertising as to sizes of viewable pictures shown by television receiving sets adopted Februray 24, 1966.

[FR Doc.71-16161 Filed 11-9-71;8:45 am]

# Title 32—NATIONAL DEFENSE

## Chapter VI—Department of the Navy

SUBCHAPTER C—PERSONNEL

## PART 713—NAVAL RESERVE AND MARINE CORPS RESERVE

### Subpart A—Naval Reserve

PROMOTION POLICY

1. The table of contents for Part 713 is amended to delete the current entries for §§ 713.372, 713.373, 713.374, 713.375, and 713.376, and to insert the following new entries:

Sec.
713.372 Selection Boards; Naval Examining Boards.
713.373 Eligibility for consideration by selection boards.
713.374 Promotion.
713.375 Physical standards for promotion.
713.376 Promotion of ensigns.

and to delete the following:

Sec.
713.377 Duties of selection boards.
713.378 Promotion lists.
713.379 Professional and physical qualifications.
713.379a Appointment of selectees.
713.379b Temporary and permanent appointments.
713.379c Failure of selection and promotion.
713.379d Promotion of ensigns to lieutenant (junior grade).

2. Section 713.371 is amended to read as follows:

**§ 713.371 General promotion policy.**

(a) Chapter 549 of title 10, United States Code, governs the promotion of eligible Reserve officers not on extended active duty and of those Reserve officers serving on extended active duty for the purpose of administering and training the Naval Reserve.

(b) Notwithstanding paragraph (a) of this section, the promotion of Reserve officers to grades above lieutenant (junior grade) under regulations prescribed by the Secretary of the Navy is authorized by section 5910 of title 10, United States Code, wherever any part of the law governing the promotion of a Reserve officer's running mate is suspended. Further, the cited statute also authorizes promotions to the grade of lieutenant (junior grade) under regulations prescribed by the Secretary of the Navy whenever ensigns of the Regular Navy on the active list are promoted with less than 3 years of service in grade.

(c) On January 5, 1970, the Secretary of the Navy approved regulations to govern the temporary promotions of officers of the Naval Reserve as well as regulations to govern attrition of such officers when required by sections 6389 and 6403 of title 10, United States Code.

3. Section 713.372 is amended to read as follows:

**§ 713.372 Selection boards; naval examining boards.**

Promotions above the grade of lieutenant (junior grade) will be upon recommendation of selection boards convened by the Secretary of the Navy or such other official as the Secretary may direct. From among those officers who are eligible for consideration for promotion, each selection board shall recommend those officers whom it considers best fitted, fitted, or qualified for promotion in accordance with the applicable criteria prescribed in 10 U.S.C. 5896. Each board shall also report the names of officers, among those eligible for consideration, whose reports and records in its opinion indicate their unsatisfactory performance of duty in their present grades and in its opinion indicate that they would not satisfactorily perform duties of a higher grade. Upon completion of its selections for promotion, each board shall constitute itself as a naval examining board and may recommend for promotion to the next higher grade those selected officers who, in the opinion of the board, are morally and professionally qualified. Each board shall serve until its recommendations have received presidential approval or disapproval.

4. Section 713.373 is amended to read as follows:

**§ 713.373 Eligibility for consideration by selection boards.**

Eligibility for consideration for promotion of Reserve officers of the Navy whose names are not on a lineal list will be as prescribed in 10 U.S.C. 5891 and 5899, except that captains in an active status who are members of the Standby Reserve are not eligible for consideration for promotion to the grade of rear admiral. Eligibility for consideration for promotion and appointment of Reserve officers of the Navy whose names are on a lineal list will be governed by the applicable sections of title 10, United States Code.

5. Section 713.374 is amended to read as follows: