(h) Line 19 "MAC charter hours per aircraft day" shall be determined by dividing line 18 "Aircraft days assigned to service—carrier's equipment" into line 17 "MAC charter aircraft hours flown (airborne)."

(i) "Directed landings" reported on line 20 shall reflect the number of landings directed by MAC and performed by the carrier for Logair and Quicktrans services, for which the carrier receives a fixed compensation in addition to the line-haul rate.

(j) Line 21 "MAC charter aircraft hours flown (ramp-to-ramp)" shall reflect all hours that relate to "Total MAC charter miles flown."

(k) Line 22 "Commercial backhaul revenue ton-miles" shall reflect all ton-miles that relate to commercial backhaul miles flown as reported on lines 13 and 14.

NOTE: The reporting requirements herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

8. Amend CAB Form 243 by deleting old Schedules D–1, D–2, and D–3 and by adding new Schedules D–1, D–2, D–3, D–4, and D–4(a) as shown in Exhibits A, B, C, D, and E.[13]

(Secs. 204(a) and 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766; 49 U.S.C. 1324, 1377)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

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Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

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

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

"Cents-Off" Representations

The Federal Trade Commission, on June 30, 1971, published an order in the FEDERAL REGISTER (36 F.R. 12284) which provided for a period of 30 days in which to file objections and requests for public hearing covering the regulations governing the use of "cents-off", "introductory offer" and "economy size" representations imprinted on packaged or labeled consumer commodities under the Fair Packaging and Labeling Act. Communications were received from seven (7) firms and trade associations in response to the order either expressing objections, offering comments or asking questions. Some of those submitting objections also requested that their objections be made the subject of a public hearing.

The Commission has evaluated all of the comments and objections received and concludes as follows:

(1) Several objections were made to § 502.100(b)(3) that requires a package or label bearing a "cents-off" representation to have imprinted thereon a triple price statement showing the regular price, the amount of "cents-off" and the price to be paid by the consumer. These objections assert that the requirement imposes such an administrative burden on the retailers that many have stated they will refuse to handle such items in the future. In addition, it is argued that many packages such as cans, jars, and bottles do not normally have a pricing spot employed in the labeling but are stamped on the top or cover. Thus, the use of the triple price statement imposes mechanical difficulties of placement and may cause confusion to the consumer when not fully utilized.

It was suggested that in lieu of the triple price statement, a statement employing terms such as "The Price Marked Is _____¢ Off the Regular Price" be required to accompany any representation of "cents-off" on the package or label. This certification would then qualify the single retail price, when stamped at any location on the package, permitting the consumer to ascertain the regular price by simple addition of the number of "cents-off" and the price stamped on the package. This modification to the regulation would eliminate the administrative burden of dual pricing at the retail level and still provide the consumer with the three price information.

The Commission considers these objections reasonable. However, assurance that each consumer is informed of the ordinary and customary retail price of the "cents-off" marked commodity at the time of sale is considered essential to the facilitation of value comparisons by the consumer. Thus, provision in the regulations for supplying the retailer with a means of disclosing the regular price in a clear, conspicuous manner and in close proximity with the shelf display of the "cents-off" marked merchandise is made. That portion of the regulations affected is modified below, accordingly.

(2) Several objections were made to the requirements of §§ 502.100(c), 502.101(d) and 502.102(c) that packagers and labelers shall not make packages with "cents-off" introductory offer and economy size representations available in any circumstances where they will be used as instrumentalities of deception. The objections express concern that the necessity to "police" the retailer could subject the packager to charges of resale price maintenance or a failure to comply with the mandates under the Robinson-Patman Act. The Commission has issued guides for advertising allowances and other merchandising payments and services which are of assistance in this matter. In addition, the Commission is publishing, concurrent with issuance of this rule, a statement of policy guidance on the matter. Requests for further clarification in particular fact situations may be submitted in accordance with § 503.1 of the regulations. In view of the guidance available, the Commission has determined that the objection does not warrant further consideration.

(3) Some objections raised the question whether the term "Special Offer" used on a package or label would fall within the term "cents-off" representation" as defined in § 502.100(a). Price savings offers which do not specify the amount of savings to be realized are not regulated under § 502.100. However, it should be recalled that the Commission's guides against deceptive pricing admonish that when the amount or percentage of reduction of a price is not stated, then care must be taken that the amount of reduction is not so insignificant as to be meaningless. It should be sufficiently large that the consumer, if he knew what it was, would believe that a genuine bargain or saving was being offered.

(4) An objection was received to the definition of the term "ordinary and customary or regular price" set forth in § 502.2(c). The objection points out the frequent employment of trade discounts and allowances granted by a packager to a retailer in return for services rendered and suggests these be specifically eliminated in calculating the ordinary and customary price.

The Commission concludes that it is not in order to totally exclude trade discounts and allowances since many of these directly affect the ordinary and customary price. Normal trade discounts with or without volume considerations are clearly a part of the formula used to compute the ordinary and customary price. On the other hand, reimbursement for services which have no direct relationship to the sale price such as advertising, hand bills, demonstrators, and window and floor displays will not normally be a part of that formula. Requests for clarification in particular fact situations may be submitted under § 503.1 of the regulations. Further consideration of this objection is not warranted.

(5) An objection was received to § 502.101(b)(1) which limits the use of introductory offers to a package containing a new product, a product which has been changed in a functionally significant and substantial respect or a product which is being introduced into a trade area for the first time. The objection states that in the past, introductory offers have been frequently used to introduce new package sizes.

The Commission has determined that the promotional concept of introductory offer is only meaningful to the consumer when it relates to the product as new or newly introduced into a trade area. Promotions based on package size alone would be inconsistent with the intent of the Act to reduce package size proliferation. Therefore, the Commission has determined that the objection is not based on legally sufficient and reasonable grounds and that a public hearing is not warranted.

(6) Several objections were received noting the omission in the regulations

[13] Filed as part of the original.

of any provision for orderly disposal of packages in inventory or with the trade. In addition, comments concerning the effective date of the regulations emphasize the need for a period of advance planning to accomplish plate changes, printing, and availability of complying packages.

The Commission recognizes that section 6(d) of the Act provides that regulations when issued will not preclude the orderly disposal of packages in inventory or with the trade as of the effective date of the regulation. This provision has been construed to permit the filling of nonconforming packages until the effective date of the regulation and further permits distribution of the nonconforming packaged products in inventory following that date. Unfilled nonconforming packaging on hand as of the effective date may not be used unless modified to comply with the regulation. The Commission assumes good faith in the quantitative nature of packaging and labeling prior to the effective date being related to normal packaging and distribution practices. In keeping with the mandates of the Act, to issue necessary regulations and consistent with the provision allowing for orderly transition to complying packaging, the Commission will establish effective date to provide, where necessary, for adequate advance planning to accomplish label changes. In view of the specific limitations set forth in the Act and the Commission's previously issued guidance, these objections do not warrant further consideration.

To facilitate making the above described change in response to the objection and comments received, the Commission concludes that § 502.100 of the final order of June 30, 1971 (36 F.R. 12284) should be canceled and a new final order on this matter should be adopted as set forth below.

Accordingly, the December 31, 1971, effective date of the remaining sections of Part 502 is confirmed and pursuant to the authority contained in the Fair Packaging and Labeling Act (sections 5, 6, 80 Stat. 1298, 1299, 1300; 15 U.S.C. 1454, 1455); it is ordered that Part 502 of Subchapter E be amended by revising § 502.100 to read as follows:

§ 502.100 "Cents-off" representations.

(a) The term "cents-off representation" means any printed matter consisting of the words "cents-off" or words of similar import, placed upon any packaging 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) Each "cents-off" representation imprinted on the package or label is limited to a phrase which reflects that the price marked by the retailer represents the savings in the amount of the "cents-off" the retailer's regular price, e.g., "Price Marked is _____¢ Off the Regular Price". "Price Marked is _____ Cents-off the Regular Price of This Package"; provided, the package or label may in addition bear in the usual pricing spot a form reflecting a space for the regular price, the represented "cents-off" and a space for the price to be paid by the consumer.

(4) The packager or labeler who sells the commodity at retail displays the regular price, designated as the "regular price", clearly and conspicuously on the package or label of the commodity or on a sign, placard, or shelf-marker placed in a position contiguous to the retail display of the "cents-off" marked commodity, and the packager or labeler who does not sell at retail provides the retailer with a sign, placard, shelf-marker, or other device for the purpose of clearly and conspicuously displaying the retailers regular price, designated as "regular price", in a position contiguous to the "cents-off" marked commodity.

(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 the consumers the represented price reduction or where the retailer fails to display the regular price in the display area of the "cents-off" marked product. 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 in situations where he does not sell to the public.

(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.

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 January 2, 1972, except (1) any provision that may be stayed by the filing of valid objections and (2) § 502.100(b)(3) which shall become effective on June 30, 1972.

By direction of the Commission dated December 1, 1971.

[SEAL] CHARLES A. TOBIN,
Secretary.

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