Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares (less directors' qualifying shares) of Suburban Bank of Rolling Meadows, Rolling Meadows, Ill. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 5, 1978.

Board of Governors of the Federal Reserve System, January 9, 1978.

GRIFFITH L. GARWOOD,
*Deputy Secretary of the Board.*

[FR Doc. 78-985 Filed 1-12-78; 8:45 am]

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[6750-01]

## FEDERAL TRADE COMMISSION

### DELEGATION OF AUTHORITY

#### Referral of Complaints

Notice is hereby given that, pursuant to Reorganization Plan No. 4 of 1961, the Commission has delegated to the Director of the Bureau of Consumer Protection and to the Director of the Bureau of Competition, with power to redelegate as necessary, the authority to refer complaints to other Federal, State, or local government agencies for appropriate action when the matter complained of or inquired about may come within the jurdisdiction of such other agency.

By direction of the Commission dated December 9, 1977.

JAMES A. TOBIN,
*Acting Secretary.*

[FR Doc. 78-953 Filed 1-12-78; 8:45 am]

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[6750-01]

### COLEMAN CO., INC.

#### Denial of Application for Waiver

AGENCY: Federal Trade Commission.

ACTION: Denial of Application for a Waiver of Section 102(c) of the Magnuson-Moss Warranty Act.

SUMMARY: By application dated July 15, 1976, the Coleman Co., Inc. ("Coleman"), a manufacturer of heating and cooling appliances and associated equipment for mobile homes, requested a waiver of section 102(c) of the Magnuson-Moss Warranty Act, Pub. L. 93-637, 15 U.S.C. 2302(c) (the "Act").

Section 102(c) of the act provides that no warrantor of a consumer product may condition a written or implied warranty of such product on the consumer's using, in connection with such product, an article or service (other than one provided without charge) identified by brand, trade or corporate name, unless a waiver of this provision is granted by the Commission. Coleman proposes to include in its mobile home furnace warranty the following provision:

> This warranty is expressly conditioned upon the use of air-conditioning conversion blowers, gas valves, limit switches, and air conditioning coils that have been certified or approved for use in this furnace by nationally recognized testing laboratories such as Underwriter's Laboratories, Inc. or the American Gas Association, Inc., and use of noncertified or unapproved components will void the warranty.

Coleman applied to the Commission for a waiver of section 102(c) pursuant to that section. As required by section 102(c), the Commission published in the December 8, 1976 FEDERAL REGISTER (41 FR 53708) a call for comment on Coleman's application for a waiver. The public record was open for comment for 60 days and was closed on February 6, 1977. Twelve comments were submitted. In reaching its decision, the commission has carefully considered these comments as well as the evidence submitted by Coleman in support of its application.

The application of the Coleman Co., Inc. for a waiver of section 102(c) is denied for the reasons set forth below.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Alan Rubin, Staff Attorney, Division of Special Statutes, Federal Trade Commission, Washington, D.C. 20580, 202-724-1100.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Magnuson Moss Act provides that no warrantor of a consumer product may condition a written or implied warranty of such product on the consumer's using in connection with the product any article or service identified by brand, trade, or corporate name. Exception is made for an article or service provided free of charge. The Commission is authorized to grant a waiver of this provision if the statutory standards of section 102(c), discussed below, are met.

Coleman requests a waiver of section 102(c) to use a warranty for its mobile home furnaces that is expressly conditioned on the use of air-conditioning conversion blowers, gas valves, limit switches, and air conditioning coils that have been certified or approved for use by nationally recognized testing laboratories such as Underwriter's Laboratories, Inc. or the American Gas Association. Use of non-certified or unapproved components would void the warranty. Coleman points out that its application for waiver does not request permission to condition Coleman's warranty on the use of brand name components but rather on the use of components certified or listed by nationally recognized testing laboratories,[1] and arguably might not fall within the scope of section 102(c). Coleman explains that it would condition its warranty performance upon use of components that were tested by the approval agency when the appliance was submitted for certification.[2] Coleman states that use of components other than those submitted with the furnace and included in the certification of the appliance would render the certification inapplicable to that particular installation and in some instances make the installation violative of HUD's mobile home construction and safety standards.[3]

The Commission believes that section 102(c) is clearly applicable to situations where warranty coverage is tied to the use of products certified or approved by testing laboratories. For purposes of determining whether a waiver must be sought, the Commission sees little basis for distinguishing between direct and indirect (e.g., certification) references to brand, trade or corporate names. Certification may or may not be relevant to the task of analyzing whether a warranted product will function properly in the absence of using specified products or services. But that is for the Commission to decide in the first instance.[4] The Commission, accordingly, concludes that a waiver must be obtained here.

The Magnuson-Moss Warranty Act provides that the Commission may waive the prohibition of section 102(c) if—

(1) The warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) The Commission finds that such a waiver is in the public interest.

Both standards must be satisfied for the Commission to grant a waiver.

Coleman asserts that unless components are used that have been certified

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[1] Coleman Application, p. 3.
[2] Id., p. 2.
[3] Id., p. 3.
[4] There is some evidence in the present case that certification may not be available to all manufacturers. Since it appears that only those components submitted with the furnace are eligible for certification (Coleman application, p. 3), Coleman is in a position to exercise considerable influence, if not actual control, over the brand name products selected for approval by the testing laboratory.

with its mobile home furnaces, there is no assurance that they will function properly or safely, and that the waiver is therefore in the public interest.[5] The need for safe parts is echoed in the comments submitted by those who support Coleman's waiver request.[6] For example, GAMA states:

> Consumers and the government agencies acting on their behalf today, more than ever before, are insisting that products be safe and function properly. Only by testing the product, mated with principal components, can the safe operation of the product be verified.[7]

The Commission recognizes that potential safety problems arising from use of articles or services other than those sought to be identified in the warranty are a matter of legitimate concern. The Commission believes that products such as Coleman's mobile home furnaces could hardly be said to function properly within the meaning of the statute if they endangered health or safety in a manner or to an extent that would not occur if they were used only in connection with the article or service sought to be required by the warranty. Allegations of safety-related problems caused by articles or services other than those the warranty would identify can properly be considered under the standard set forth in section 102(c)(1). Thus, the Commission has considered fully Coleman's claims about potential safety problems arising from the use of non-certified components in its consideration of whether Coleman has met the standard set forth in Section 102(c)(1).

Coleman has submitted the following materials in support of its application:

(1) Blueprints of the appliances;

(2) Installation and instruction manuals and copies of the proposed warranties;

(3) A directory of Certified Appliances and Accessories issued by the American Gas Association; and

(4) A "case study" of one installation that has been repaired using non-certified components.

The first two items clearly identify the parts and products involved in the waiver request, but do not address the statutory standard. While the third item indicates that Coleman parts are certified and that certified parts not manufactured by Coleman are available, it also does not address the statutory standard.

The case study stands as the sole support for the claim that Coleman furnaces will function properly only with certified parts. The case study includes photographs, and a report of a field investigation that describes the results of the installation of a noncertified motor, capacitor, humidifier, wiring, evaporator coil, condensing unit and various air conditioning components in a Coleman mobile home furnace. The case study includes statements—apparently made by a Coleman agent who inspected the appliance—that the effects of using these parts "could not be determined" (p. 2); or that they "may present an unreasonable hazard, however no determination could be made" (p. 4). Many of the problems described appear to be the result of improper installation by the consumer or by a repair person not an agent or employee of Coleman for which Coleman can, and does, expressly and effectively disclaim all liability[8] and not due to the use of noncertified parts. For these reasons the Commission concludes that this single case history does not support Coleman's claim that certified parts are necessary for the proper operation of Coleman appliances.

Coleman also contends that state building codes and current HUD mobile home construction regulations require the use of certified parts. The implications of this argument are that a waiver is necessary for the Commission to be consistent with those laws and to prevent section 102(c) from halting Coleman's efforts to ensure compliance with these safety regulations.

This argument is not persuasive for several reasons. As Coleman recognizes in its application,[9] any reliance on State law in this regard is misplaced, as the HUD Mobile Home Construction and Safety Standards, 24 CFR Part 280, preempt state law.[10] Furthermore, the HUD regulations on which Coleman relies do not prohibit the use of parts other than those certified by nationally recognized testing laboratories. Although most specific provisions relating to individual components of the mobile home require certified parts to be used,[11] Part 280.1(a), which describes the general scope of the regulations, states:

Thus, as one comment notes,[12] the HUD regulations do contemplate circumstances under which non-certified parts may be used.

Moreover, Coleman's assertion that the proposed warranty provision merely incorporates the requirements of HUD regulations is incorrect. Section 280.2(17) of the regulations defines "mobile home construction"—the focus of the regulations—as "all activities relating to the *assembly and manufacture* of a mobile home * * *." [Emphasis added.] The regulations do not apply to the repair of mobile homes or to their use and maintenance by consumers, as would the warranty provision proposed by Coleman. Thus, the proposed warranty would go beyond the scope of the HUD regulations.

Coleman asserts in the application that there is "no assurance" that noncertified parts will function properly.[13] However, this contention does not address the statutory standard for a waiver. Certification by a nationally recognized testing agency may indicate that the part was designed to function properly in a particular application, but noncertification of a particular part does not indicate that the part will not function properly. Noncertified parts may perform, on the whole, better or worse than certified parts.

The application for a waiver of section 102(c) is denied.

By direction of the Commission.

Dated: December 22, 1977.

CAROL M. THOMAS,
*Secretary.*

[FR Doc. 78-954 Filed 1-12-78; 8:45 am]

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[6750-01]

## ENFORCEMENT POLICY WITH RESPECT TO MERGERS IN DAIRY INDUSTRY

### Criteria for Assessing Future Mergers

The merger activity of the four largest national dairies, which during the 1950's was creating high local concen-

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[5] Coleman Application, p. 4.

[6] Locke Stove Co.; Gas Applicance Manufacturers Association (GAMA); Motor Wheel Corp. (in part).

[7] Comment of GAMA, p. 1.

[8] The fourth item in the list of "exceptions and exclusions" from coverage under Coleman's mobile home furnace warranty states "This warranty does not cover damage caused by * * * improper installation".

[9] Coleman application, p. 2.

[10] The Mobile Home Construction and Safety Standards Act, 42 U.S.C. 5401 et seq., under which HUD's regulations were promulgated, states: Whenever a Federal mobile home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any mobile home covered, any standard regarding construction or safety applicable to the same aspect of performance of such mobile home which is not identical to the Federal mobile home construction and safety standard. 42 U.S.C. 5403(d).

[11] See, for example, 24 CFR Part 280.714(a), 280.708(a), and 280.611(b)(2).

The Secretary may approve such equipment and installations which are listed or labeled by an approved testing or listing agency. *Equipment and installations not listed or labeled may be approved by the Secretary upon a determination that such equipment and installations are adequate for the protection of health, safety and the general welfare.* 24 CFR 280.1(a) [emphasis added].

[12] Comment of Swankin and Turner, p. 1.

[13] Coleman application, p. 4.