

REPORT OF THE OFFICE OF THE CHAIRMAN
IN SUPPORT OF RECOMMENDATION NO. 4

The only federal publication of general national circulation which contains announcements and information of proposed or new government rules and regulations of interest to consumers is the Federal Register. As Miss Betty Furness, Special Assistant to the President for Consumer Affairs, stated in a letter to the Chairman of the Administrative Conference suggesting the development of a Consumer Bulletin:

"I have become concerned about the lack of consumer involvement in government rule making affecting consumers. Day by day, agencies of our government fill the Federal Register with proposed and final rules, orders, and policies which directly and importantly affect consumers. Yet these publications go virtually unnoticed by consumers. More importantly, consumers are not participating in the establishment of the rules which are supposed to reflect the interest of the consumer.

"When the laws prescribing the method of publication and issuance of regulations were designed, they were aimed largely at providing a fair notification procedure for the industry regulated under the rules. No doubt this system has afforded 'due process' to the regulated industry. Yet the system apparently does not perform the function of providing the consumer with notice sufficient to stimulate him to participate in the making of rules which directly and significantly affect him. Stated in another way, it may be that the legal requirements of fairness also necessitate additional assistance to the consumer.

"Obviously, the consumer is in a poor position to attempt to comprehend the legal and technical language comprising the typical Federal Register notice—if, indeed, he knows of the existence of the Federal Register. The consumer does not have the benefit of the professional advice available to industry through house counsel, trade associations, trade papers, "Washington counsel, etc. In most cases he has neither the time nor the collateral library materials to allow him to keep track of developments.

"With the above in mind, I am submitting for the consideration of the Administrative Conference a file containing a few suggestions developed in my office for involving consumers in governmental rule making.

"Essentially, what I am proposing is that there be established a regular publication serving the needs of consumers in the same way that the Federal Register serves the needs of the regulated industry—a 'Consumer's Federal Register' if you will. I think it would serve consumers' needs if the major issues, culled from each proposed and final rule directly and importantly affecting consumers, were summarized in such a publication with brief explanation of how the consumer could register his

views or obtain more information from the agency issuing the rule. The publication could be made available to consumers for a nominal sum.

"Our proposal does not explore the questions of whether fairness or the elements of due process for consumers also might require preliminary public hearings prior to the adoption of such a rule, and of whether the validity of such a rule might be made dependent upon proper translation and publication for consumers. These and other questions pertaining to the proposal are deferred to you and the Conference."

Upon receipt of the letter from Miss Furness, the Council members were contacted and it was agreed that a Consumer Bulletin should be the subject of a study by the Conference. Mr. Leonard Niederlehner, Acting General Counsel of the Department of Defense, and Chairman of the Committee on Information, Education and Reports was advised of this determination. The Consultant to that Committee, Professor Jerome Shuman of Howard University, immediately undertook a study of the legal and other problems. At the same time, the professional staff of the Conference surveyed the kinds of information currently available in the Federal Register which might appropriately be included in such a Bulletin. Appendix A describes items found in the Federal Register during a two-week period chosen at random.

Professor Shuman interviewed a number of individuals within and without government; and in an informal memorandum recommending the establishment of a Consumer Bulletin, he said:

"Federal agencies generally publish in a wide variety of formats the decisions, activities, findings and rulings which take place within the scope of their operations. Much of the information contained in these publications have consumer implications. However, the consumer remains unaware of many of the rules, orders and policies established by government even though he is directly affected by them. * * * What is needed is a regular publication that will serve the needs of the consumer in much the same way the Federal Register serves industry. The proposed bulletin would bring together in one place this consumer information. The information contained in the Bulletin would be drawn from existing government publications. No agency need be required to develop information especially for the Bulletin. In its initial stage the information in the Consumer Bulletin could and should parallel that included in the Federal Register except it would be brief and would be written in language readily understandable by all."

Professor Shuman noted the existence of several excellent private publications, as well as those of some agencies, none of which, however, has the scope of the proposed Bulletin.

After considering several alternatives, he concluded:

"The newly created Office of Consumer Counsel should be the office responsible for the development, publication and dissemination of the Consumer Bulletin."

The subject was considered by the Council at its meeting on November 11, 1968. The recommendation to establish a Consumer Bulletin in the Office of Consumer Counsel, Department of Justice on an experimental basis was approved. Subsequently, the Administrative Conference has been advised that the Attorney General, and the Consumer Counsel, Mr. Paul Bower, support the establishment of a Consumer Bulletin and its publication by the Office of Consumer Counsel.

ATTACHMENT

ILLUSTRATIVE MATERIAL SELECTED FROM THE FEDERAL REGISTER
(COVERING THE TWO WEEK PERIOD BEGINNING APRIL 23, 1968)

Headlight Concealment Devices—Referring to “reports of several accidents and incidents caused by . . . inadvertent blacking out of headlamps,” the Federal Highway Administration announced that it has adopted a Motor Vehicle Safety Standard for headlight concealment devices. Among other provisions in the new Standard is a requirement designed to insure fail-safe operation of such a device in the event of a malfunction affecting its power supply. If provided on an automobile built on or after January 1, 1969, the device must remain open if it is open when the malfunction occurs; and if it is not open at the time, it must be capable of being opened without using tools.

More Automobile Safety Standards—Other new Safety Standards of Federal Highway Administration provide for:

- A second hood latch or latching system*, if a sudden hood opening would partially or completely obstruct the driver's forward view (effective 1-1-69).
- Three anti-theft features*:
 1. *More key and lock variations* (no less than 1000 for a major manufacturer).
 2. *A wheel-locking or steering-locking system* triggered by removing the ignition key.
 3. *A warning device* which is activated when the driver opens his door without removing the ignition key.

(All effective 1-1-69)

Pesticides—The Food and Drug Administration has issued a statement of policy setting forth guidelines which the agency will follow in fixing tolerances for pesticides that might find their way into milk, eggs, meat or poultry. These tolerances regulate the amounts of poisonous or possibly poisonous pesticides that may be used on raw agricultural commodities.

“Made in U.S.A.”—In an advisory opinion issued on April 4, 1968, the Federal Trade Commission ruled that this label cannot be placed on garments manufactured in this country from imported cloth.

Instant Nonfat Dry Milk—The Department of Agriculture and the Department of Health, Education, and Welfare have reached a policy agreement which will serve as a basis for a coordinated instant nonfat dry milk pro-

gram. The program will include minimum standards and inspection provisions for manufacturing grade milk, the farms which produce it, and the plants and equipment which process it. The two Departments also agreed that these standards should be made progressively more stringent.

In-Flight Entertainment and Service of Alcoholic Beverages—In light of a number of objections, the Civil Aeronautics Board has decided to reconsider its recent policy statement concerning passenger charges for visual in-flight entertainment and in-flight service of alcoholic beverages. Under this policy statement the airlines were advised to make separate charges for these services. The rule did not apply, however, to beer and wine served with meals.

Cottage Cheese Ingredient—A petition has been filed with the Food and Drug Administration which requests the FDA to amend its rules so as to permit the addition of lactose to the creaming mixture used in the preparation of cottage cheese. According to the petition, lactose would improve the flavor, body, sensation of richness, shelf life and eye appeal of the product. The FDA invites all interested persons to submit their views in writing (preferably with four extra copies) on or before June 1, 1968. Comments should be addressed to: Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue, S.W., Washington, D. C. 20201.

Catsup—The FDA has been requested in another petition to amend its identity standard for tomato catsup insofar as sweetening agents are concerned. Catsup may now be sweetened with dextrose only if it is used in combination with sugar, and with corn or glucose syrup only if the corn or glucose syrup solids do not exceed one-third of the solid weight of all sweetening mixture. The proposed amendment would permit dextrose to be used as the sole sweetener and increase the allowable proportion of corn and glucose syrups. The FDA has invited comments, and except for the deadline, the procedure is the same as that for the proposal affecting cottage cheese which is described above; in this case comments must be filed on or before June 29, 1968.