

ANNUAL
REPORT

of the Federal Trade
Commission



**For the FISCAL YEAR
ENDED JUNE 30, 1951**

Federal Trade Commission

JAMES M. MEAD, Chairman

WILLIAM A. AYRES

LOWELL B. MASON

JOHN CARSON

STEPHEN J. SPINGARN

D. C. DANIEL, Secretary

EXECUTIVE OFFICES OF THE COMMISSION

Pennsylvania Avenue at Sixth Street, Washington 25, D. C.

Branch Offices

Room 501, 45 Broadway, New York 6.

413 Masonic Temple Building, 333 St. Charles
Street, New Orleans 12.

Room 1500, 173 West Madison Street, Chicago
2.

811 U. S. Courthouse, Seattle 4.

133 Federal Office Building,
Civic Center, San Francisco 2.

Letter of Transmittal

FEDERAL TRADE COMMISSION,
Washington, D. C., January 8, 1952.

To the Congress of the United States:

I have the honor to transmit herewith the Thirty-seventh Annual Report of the Federal Trade Commission, for the fiscal year ended June 30, 1951. The Federal Trade Commission is having printed a limited number of copies of the report.

By direction of the Commission.

JAMES M. MEAD Chairman.

THE PRESIDENT OF THE SENATE.
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

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1

Maintaining Free
Competitive Enterprise

THE MAINTENANCE of free competitive enterprise as the keystone of the American economic system is the objective of the work of the Federal Trade Commission.

The Commission's duties are many and varied under the statutes it administers. But the foundation of public policy underlying all these duties is basically the same: To prevent the free enterprise system from being stifled or fettered by monopoly or corrupted by unfair or deceptive trade practices. More than a quarter of a century ago, the Supreme Court described the task of the Commission as the prevention of practices which have a "dangerous tendency unduly to hinder competition or create monopoly" or which are "opposed to good morals because characterized by deception, bad faith, fraud, or oppression." In brief, the Commission is charged with keeping competition both free and fair.

This was the basic purpose for which the Commission was established by Congress in 1914 as an independent administrative agency.

The statutes which express this basic purpose are the Federal Trade Commission Act and the Clayton Antitrust Act. The Federal Trade Commission Act makes unlawful the use in commerce of "unfair methods of competition" and "unfair or deceptive acts or practices." The Clayton Act prohibits specific monopolistic practices. Under both statutes, the Commission seeks to stop in their early stages practices which are unfair, promotive of monopoly, or tending substantially to lessen competition. In addition to authorizing legal proceedings for this purpose, the Federal Trade Commission Act also vests in the Commission economic reporting functions designed to provide, for the Congress, the President, and the public, information on matters affecting the competitive economy.

In all these activities, emphasis is placed on fostering opportunities for the successful operation of small, independent business and on preserving for the consuming public, as well as for all business, the benefits of free and fair competition in industry and trade. Other statutes administered by the Commission are the Export Trade Act, the Wool Products Labeling Act, and certain sections of the Lanham Trade-Mark Act. And shortly after the close of the fiscal year, the Commission was given the duty of enforcing the newly-enacted Fur Products Labeling Act. The statute, which becomes effective August 7, 1952, expands and strengthens the Commission's jurisdiction over the misbranding and false advertising of furs and fur products.

Under the statutes it administers, the Commission's principal functions are:

To promote free and fair competition in interstate commerce in the interest of the public through prevention of price-fixing agreements, boycotts, combinations in restraint of trade, other unfair methods of competition, and unfair or deceptive acts or practices.

To safeguard the consuming public by preventing the dissemination of false or deceptive advertisements of food, drugs, cosmetics, and therapeutic devices.

To prevent discriminations in price, exclusive-dealing and tying arrangements, corporate mergers, and interlocking directorates when the effect of such practices or arrangements may be substantial lessening of competition or a tendency toward monopoly; the payment or receipt of illegal brokerage; and discrimination among competing customers in the furnishing of or payment for advertising or promotional services or facilities.

To protect producers, manufacturers, distributors, and consumers from the unrevealed presence of substitutes and mixtures in manufactured wool products.

To supervise the registration and operation of associations of American exporters engaged solely in export trade.

To petition for the cancellation of the registrations of trade-marks which were illegally registered or which have been used for purposes contrary to the intent of the Trade-Mark Act of 1946.

To gather and make available to the Congress, the President and the public, factual data concerning economic and business conditions as a basis for remedial legislation where needed, and for the guidance and protection of the public.

The Commission's law enforcement work falls into two general categories: (1) Enforcement through formal litigation leading to mandatory orders against offenders, and (2) law observance achieved by action of a voluntary and cooperative nature.

The formal Litigation cases are conducted by proceedings similar to those used in courts. Cases are instituted by issuance of a formal complaint charging a person or corporation with violation of one or more of the statutes administered by the Commission. If the charges are not contested, or if in a contested case the charges are found, after hearings, to be true, an order may be issued requiring discontinuance of the unlawful practices.

In its legal casework during the year, the Commission issued 109 complaints alleging violation of the laws it administers and entered 121 orders to cease and desist from unlawful practices. In addition, 9 proceedings were settled by acceptance of stipulations to cease and desist, for a total of 130 corrective actions in formal cases. Cases dismissed or closed totaled 32.

Law observance obtained through voluntary and cooperative action may be by way of the trade practice conference procedure, through individual stipulation-agreements, or through informal administrative correction of minor infractions. Trade practice conferences provide a means whereby members of whole industries may voluntarily cooperate with the Commission in the establishment of rules for the prevention of unfair practices on an industry-wide basis. Under the stipulation procedure, certain types of individual cases are settled by agreement without the necessity of formal adversary proceedings. In other cases, voluntary discontinuance of the use of unfair trade practices is brought about by administrative settlement. During the fiscal year 1951, the Commission promulgated trade practice rules for 9 industries. It approved 157 voluntary stipulation agreements providing for discontinuance of unlawful practices. There were 281 other matters in the deceptive practices field which were closed on the basis of a satisfactory showing that the questioned practices had been discontinued.

In both its formal trial procedures and its cooperative programs, the Commission has placed increasing emphasis, wherever feasible, upon simultaneous industry-wide elimination of unlawful trade practices.

Another important function of the Commission is that of making economic, accounting, and statistical studies of conditions and problems affecting the competitive economy. Reports of this nature may be in support of legislative proposals or for the information and guidance of the executive branch of the Government, as well as the public. Not only have the reports provided the basis for significant legislation, but by spotlighting uneconomic or otherwise objectionable trade practices, they have also led to voluntary changes in the conduct of business in many instances, with resulting benefits to both industry and the public.

The basic principle underlying all the activities of the Commission is that effective functioning of the economy and the welfare of the individual citizen depend upon the existence of free and fair competition in an open market.

THE YEAR IN REVIEW

From the standpoint of the national economy, the most significant development of the fiscal year was the initial impact of the Korean hostilities and the resulting drive to speed mobilization for defense. This over-shadowing factor required business to recast industrial production and distribution programs and to adjust to the controls necessary in the national emergency. It also necessitated governmental reassessment of the problems inevitably arising in such an emergency, with emphasis on providing safeguards to preserve the competitive system and to keep it functioning in the interest of all the people.

To meet these problems, the Commission realigned its work programs so as to contribute directly to the defense build-up and, at the same time, to protect competitive free enterprise from the deflecting tendencies inherent in defense mobilization. The situation demanded a major effort toward safeguarding small business and eliminating factors which may suppress competition, strengthen monopoly, or promote undue economic concentration. The problem of pushing defense mobilization and simultaneously guarding against these threats was pointed up in special instructions given to the defense agencies by the President on September 28, 1950. Calling on them to consult with the Attorney General and the Chairman of the Federal Trade Commission concerning these matters, the President said in part:

* * * during the last war the long-standing tendency toward economic concentration was accelerated. Partial mobilization, in the absence of protective measures, may again expose our economy to this threat and thereby imperil the very system we are seeking to protect. In numerous provisions of the Defense Production Act of 1950, the Congress indicated its concern over this danger to free competitive enterprise.

In order that this danger may be minimized, it is requested that, in performing those functions delegated to or vested in you by Executive Order 10161, you consult with the Attorney General and the Chairman of the Federal Trade Commission for the purpose of determining and, to the extent consistent with the principal objectives of the act and without impairing the defense effort, of eliminating, any factors which may tend to suppress competition unduly, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power.

The Commission took action through various channels to respond to the needs of the emergency.

Its antimonopoly case work was marked by the negotiation of a settlement in a case involving the principal producers of steel. The

order in this case—tentatively approved in June but not formally entered until August—prohibits steel industry members from engaging in price-fixing agreements and other practices found to have restrained competition. Action was taken also against a combination of five major oil companies whereby, through their joint operation and control of a subsidiary purchasing-distributing company, they systematically obtained illegally preferential treatment from manufacturers and other suppliers of tires, batteries, and other automotive accessories. The concerted activities of these corporations, according to the Commission's complaint, posed a threat to competition and were unfairly detrimental to small, independent dealers. Other antimonopoly cases in which complaints or orders were issued during the year dealt with such basic products as cement, sewer pipe, plywood products; rope, cordage, and twine used by the armed forces as well as by heavy industry; propane gas, and corn derivatives.

To stem the destructive tide of the merger movement among industrial and commercial corporations and the consequent stifling of competition, Congress amended Section 7 of the Clayton Act. The amending legislation, which was approved December 29, 1950, was enacted to plug loopholes in the original Act of 1914. Section 7 is now designed to prevent the destruction or suppression of competition through mergers of competing corporations or through the purchase by one corporation of a controlling interest in the capital stock or physical assets of its competitors. Formerly, the prohibitions of Section 7 were directed only against acquisition of capital stock; the amendment applies them to asset acquisition as well. The Commission took action to provide the fullest measure of enforcement possible within its budgetary limitations.

By way of direct assistance in the defense program, the Commission began supplying to the Office of Price Stabilization financial data covering costs, profits, and related statistical information needed for price control administration. Economic and statistical studies on rates of return in selected industries were also reported. The Commission likewise made available to the defense agencies and others a compilation of 1,000 of the largest manufacturing corporations and their subsidiaries. Economic studies and reports were undertaken in the fields of iron ore and petroleum resources. Studies involving two strategic materials, tin and mercury, were made by the Commission for the Preparedness Subcommittee of the Senate Committee on Armed Services. The Commission assisted other committees of Congress and prepared and submitted reports to them on approximately 60 legislative measures.

Under the Defense Production Act, and in accordance with Presidential directives, the Commission analyzed the competitive impact

of voluntary industry agreements and programs proposed to be exempted from the antitrust laws and the Federal Trade Commission Act as contributing to the national defense. It set up machinery for consultation with the defense officials responsible for requesting industry and other groups to carry out such agreements and programs, and arranged for clearance of these matters. It coordinated its activities in this field with those of the Attorney General, whose approval is required before the proposed antitrust immunity becomes effective.

In a related field, the Commission supplied data for use by the Attorney General in reporting upon factors in industrial mobilization which threaten to adversely affect competition in general and small enterprises in particular.

During the last 4 months of the fiscal year, the Commission undertook the work of making compliance surveys for the National Production Authority, covering NPA orders and regulations for emergency production controls.

In its antideceptive practices work, the Commission gave special attention to proceedings against exploitation of the consumer business opportunists. The Commission was on guard against false or deceptive advertising or other unfair trade practices whereby the consumer is victimized through unwarranted claims concerning quality, content, and value of products which he needs to buy for himself and his family. Emphasis was placed on cases involving medicinal preparations, clothing and other textile products, household goods, and other items essential to the economic well-being of the people.

Through its industry cooperation work, the Commission was able to provide helpful guidance to businessmen in cooperative elimination of unfair trade practices and in establishing their industry operations on a firm basis of free and fair competition. In this way, their ability to serve the public more efficiently in the emergency was improved, and the defense effort was aided in many respects.

With the funds and personnel at its disposal already insufficient to deal with the ever-expanding work of safeguarding free enterprise, the Commission took immediate steps to utilize its limited facilities in such a way as to meet the new demands thrust upon it by the defense program. After careful study and consideration, it was able to advance in substantial measure the usefulness of its administrative and quasi-judicial procedures, as well as the internal processing of its work. It reorganized its bureaus and divisions to more effectively meet its responsibilities. It revised its rules of procedure to speed the disposition of current cases as well as to reduce its backlog of cases. It improved the scope and sampling of corporate returns forming the basis of its financial reports.

Administratively, it adopted and put into effect an incentive awards program among its employees and carried forward a management improvement plan approved just before the beginning of the fiscal year. In these and other ways, the Commission has been able to materially increase the efficiency of its functioning and to enlarge the public service envisioned in the laws committed to its jurisdiction.

RECOMMENDATIONS TO CONGRESS

The Commission submits for the consideration of the Congress two recommendations for amendment of the Clayton Antitrust Act. The amendments are needed to correct deficiencies demonstrated in the course of the Commission's enforcement of the statute. They are recommended as a means of realizing more fully the antimonopoly purposes of the Act.

Section 11 requires amendment to make Clayton Act orders of the Commission more effective; to provide for less costly legal procedures in their enforcement; and to bring about uniformity in the enforcement of the Clayton Act and the Federal Trade Commission Act. Amendment of section 8, dealing with interlocking directorates, is needed to prevent evasion of its provisions and to cover certain relationships not now prohibited.

Amendment of Section 11 of the Clayton Act

The amendment proposed to section 11 would put teeth into Commission orders issued against violations of the Clayton Act. It would simply provide for cease and desist orders under the Clayton Act the same degree of finality and the same penalty provisions that are provided for orders under the Federal Trade Commission Act.

The amendment is needed to insure effective enforcement of the statutory prohibition against monopolistic mergers, competition-stifling exclusive-dealing contracts, unjust discriminations in price, services, or facilities, and certain types of interlocking directorates. It is needed to eliminate the laborious, time-consuming, and expensive procedures now required before an order under the Clayton Act is fully effective.

The Commission urges that its orders under the Clayton Act become "final" 60 days after service on the respondent unless court review is sought within that time. In case of review, the order would become "final" after affirmance by a United States court of appeals or the Supreme Court. As provided in the Federal Trade Commission Act, violation of such a final order would subject the offender to suit for civil penalties in a United States district court.

The glaring defect in the present law is that a Clayton Act order of the Commission has no force or effect without subsequent court enforcement. To make matters worse, the statute limits the Commission's right to seek such enforcement.

The statute provides that court review may be sought by either the Commission or by the person or firm subject to the order. But to secure jurisdiction of the court, the Commission is required to prove that the respondent has failed to obey the order.

This means that unless the respondent chooses to appeal, an order of the Commission—entered after protracted hearings and administrative adjudication—must dangle inconclusively. If the respondent does not choose to appeal (and relatively few respondents do), then the Commission must establish the existence of a violation, prove it to the satisfaction of a United States court of appeals, and apply for a decree of affirmance and enforcement. If a violation is proved, and if the validity of the Commission's decision is upheld, then the court issues its decree requiring the respondent to cease violating the law. Thereafter, violation of the court decree is punishable in contempt proceedings.

Thus, the Commission must prove one violation before it can issue its order. Then it must prove a second violation before it can get a court order with some teeth in it. And then, if the respondent still persists in flouting the law, and a third violation is proved, he becomes subject to a penalty for the first time.

To require the Commission to prove violation of its order before it can seek the intervention of a court of appeals for a determination of the validity and inclusiveness of the order involves spending public money to reinvestigate and retry issues which have previously been litigated. Such unwarranted expenditures cannot be avoided under the law as it now stands.

Under the procedure now provided, investigations and hearings may drag on for years before effective enforcement is obtained. The resources and energies of the Commission are thus needlessly dissipated, and the antimonopoly purpose of the Clayton Act is thwarted.

The proposed amendment is patterned after the Wheeler-Lea Act, passed in 1938 to correct the same deficiency in the original Federal Trade Commission Act. The Commission recommends that it receive prompt and favorable consideration by the Congress.

Amendment of Section 8 of the Clayton Act

The second proposal is amendment of section 8 of the Clayton Act. This proposal is based upon a recent Commission report on interlocking directorates. The relationships among large companies, as disclosed by this report, supply striking data of the inadequacy of the portion of section 8 of the Clayton Act which prohibits interlock-

ing directorates among competing corporations other than common carriers. The Commission makes no recommendation for amendment of the part of Section 8 which applies to interlocking directorates of banking corporations, nor for amendment of Section 10 of the Clayton Act, which applies to interlocking directorates of common carriers.)

The defect of the present law, as applied to interlocking directorates in manufacture and commerce, is twofold: first, the offense is so narrowly defined that the law is easily evaded; and second, certain types of interlocking relationships which impair competition are not covered by the statute. Appropriate legislation to correct these defects in the law is recommended.

Evasion of the intent of the present law is possible by placing an officer, employee, agent or substantial stockholder of one corporation upon the board of directors of another corporation where it would be unlawful for the same person to be a member of the board of directors of both corporations. For practical purposes, there is little difference between an interlock of corporations through common directors and an interlock through a director of one corporation who is an official or substantial owner in another corporation. This point has been recognized in the present statute in the case of common carriers and banks. The proposed amendment would apply the same principle to manufacture and commerce.

The most common type of interlocking relationship which impairs competition but is not covered by the present statute is that in which competing corporations are indirectly interlocked through the fact that officers or directors of each of them are members of the board of directors of one or more concerns which supply them with goods and services or which buy their products. In this type of situation, decisions on major policies of purchase and sale by the directors of the company in whose board the interlock takes place produce necessarily a working understanding as to the respective shares of that company's business to be enjoyed by the competing customers or suppliers from which the directors come.

Another type of relationship which endangers competition is that in which one of a group of competitors is represented on the board of a public utility company. Even though the utility is so affected with a public interest that it is required by law to serve all customers without discrimination, preferential relationships between this competitor and the public utility company are to be expected in such a situation.

A third type of problem is created by the direct vertical interlock of a buyer with a seller in cases in which either concern has such power in the market that if the other is given preferential treatment, competitors will find it difficult to compete with the preferred concern.

Amendments to cover these deficiencies are required if the Congressional intent to protect the competitive structure of industry and business is not to be frustrated.

Minority Statement on Section 11 of the Clayton Act

Commissioner Lowell B. Mason submits the following statement of nonconcurrence with the Commission's legislative recommendation as to section 11 of the Clayton Act:

The past record of the Commission's efforts to enforce the Clayton Act shows that the impetus to secure finality of its orders in Clayton Act cases lies in the field embraced by the Robinson-Patman Act amendment to the Clayton Act.

Giving finality to such orders, in my opinion, puts the cart before the horse and makes a bad matter worse. The Robinson-Patman Act since the day of its birth has been the subject of bitter controversy at all levels of Government and business. Fifteen years ago when it was passed, Congressman Celler predicted: "The Courts will have the devil's own job to unravel the tangle."

His prediction has come true.

Most regulatory legislation lends itself to clarification by case law. Here, however, we have the paradox where fifteen years of litigation have only swelled the areas of confusion. The ambiguities and uncertainties in its application have been the despair of Government administrators and the Courts. Businessmen and their attorneys, economists and accountants cannot fathom its complexities. Referring to one section, Professor Oppenheim of George Washington University called it a legislative monstrosity and condemned it as working harm to small business. Other leading students of the law have challenged the inconsistencies and contradictions of the Act in relation to other Federal antitrust laws. Nor have the Courts been silent as to its frailties.

Before giving finality to orders under such a statute, Congress should first take stock of the Act. Certainly an attempt to increase its penalties before knowing what is being penalized only adds fat to the fires of confusion.

Congress should look at the record of the past fifteen years.

Have the objectives of the Act proved sound?

Have the interpretations of the Commission and the Courts been in harmony with what Congress intended?

Does business, large and small, know what the Act means and does any one know the boundaries of lawful conduct under it?

Is the Act worth the price of the inquisitorial procedures it has produced and the volume of litigation it has created?

In my opinion, Congress should first inform itself on these questions before considering the Commission's request for more power.

2

The Commission and Its Staff

THE FEDERAL TRADE COMMISSION was organized as an independent administrative agency March 16, 1915, under the provisions of the Federal Trade Commission Act, which was approved September 26, 1914. It consists of five members, appointed by the President with the advice and consent of the Senate. Not more than three of the Commissioners may be members of the same political party.

Appointment of a Commissioner is for a term of 7 years, dating from the 26th of September last preceding his nomination, unless he succeeds a Commissioner relinquishing office prior to expiration of his term. In such cases, the statute provides that the new member shall be appointed only for the unexpired term. Upon the expiration of his term of office, a Commissioner continues to serve until the appointment and qualification of his successor.

The Chairman of the Commission is appointed by the President.

Members of the Commission as of June 30, 1951, were James M. Mead, Democrat, of New York, Chairman; William A. Ayres, Democrat, of Kansas; Lowell B. Mason, Republican, of Illinois; John Carson, Independent, of Michigan; and Stephen J. Spingarn, Democrat, of New York.

Each case coming before the Commission is assigned to a Commissioner for examination and report before it is acted upon. The Commission meets regularly for the consideration of cases and for the transaction of other business. The Commissioners hear oral argument in formal cases and frequently preside individually at industry trade practice conferences.

Under the President's Reorganization Plan No. 8, effective May 24, 1950, the administrative management of the Commission is vested in the Chairman. Subject to specified limitations, the Chairman is responsible for the appointment and supervision of personnel, the distribution of business among personnel and among administrative units, and the use and expenditure of funds. Under this arrangement, the other Commissioners are relieved of many administrative details.

The Commission as a whole retains responsibility, however, for general policies and passes on management matters of primary significance. Such matters may include the revision of budget estimates,

the distribution of appropriated funds according to major programs and purposes, and the appointment of the heads of major operating and administrative units.

STAFF ORGANIZATION

Commission employees, as of June 30, 1961, numbered approximately 685, including attorneys, economists, accountants, statisticians, and administrative personnel stationed in Washington and in branch offices in New York, Chicago, San Francisco, Seattle, and New Orleans. In addition, there were 73 employees being paid from funds allocated by the National Production Authority and the Office of Price Stabilization for special defense projects being performed by the Commission at the request of these agencies.

The Commission's staff organization at the close of the fiscal year included the following bureaus and divisions:

Office of the Secretary and Executive Director.—The Office of the Secretary and Executive Director is the central office of the Commission through which most of the work flows to and from the Commission. The duties of the office are of a dual nature.

In his capacity as Secretary to the Commission, the Secretary and Executive Director receives and handles mail on all phases of the Commission's work, either assigning it to the appropriate officials for attention or preparing and dispatching replies for or at the direction of the Commission. He signs all orders and certain other official documents and papers of the Commission; keeps the minutes of the Commission and the calendar of pending matters for the Commissioners; arranges for oral arguments before the Commission; issues the directives of the Commission; and is the legal custodian of the seal, papers, records, and property of the Commission.

In his capacity as Executive Director, the Secretary and Executive Director assists the chairman in the general management of the Commission. He examines and surveys the operations of the Commission and makes recommendations for organizational and procedural improvements. He also is director of the Bureau of Administration, composed of the staff units engaged in administrative functions. These units are the Division of Budget and Finance, Division of Personnel, Division of General Services, and Division of Information and Library.

Office of the General Counsel.—The General Counsel is the principal legal officer of the Commission, advising it on questions of law, policy, and procedure arising in connection with litigation before the agency or in the Federal courts, or in connection with legislative and other matters. Grouped under the General Counsel are five divisions, each headed by an Assistant General Counsel. These divisions and their

duties are as follows: (1) Assistant General Counsel in Charge of Appeals—representing the Commission in appellate proceedings in the Federal courts; (2) Assistant General Counsel in Charge of Special Legal Assistants—furnishing legal assistance to the Commission or its individual members in connection with formal proceedings before the Commission; (3) Assistant General Counsel in Charge of Compliance— representing the Commission in matters involving compliance with or enforcement of orders to cease and desist; (4) Assistant General Counsel in Charge of Industry Cooperation— advising the Commission on legal and other problems involved in its program of industry cooperation; and (5) Assistant General Counsel in Charge of Trade-Marks and Insurance—representing the Commission before the Patent Office and United States courts in the prosecution of petitions in trade-mark cancellation proceedings, and advising the Commission on jurisdictional and other problems in applying the Federal Trade Commission Act and the Clayton Act to the interstate insurance business.

Bureau of Antimonopoly.— This Bureau is responsible for the investigation and trial of all antimonopoly cases and the administration of the Export Trade Act. Headed by a Director and Assistant Director, the Bureau consists of the Division of Investigation and Litigation, which makes field investigations of monopolistic practices and handles the trial of antimonopoly cases before trial examiners and the Commission; and the Division of Export Trade, which is charged with the duty of supervising the organization and operation of export trade associations organized under the Export Trade Act.

Bureau of Antideceptive Practices.— Centered in this Bureau are the functions of investigating and trying cases involving unfair and deceptive practices in violation of the Federal Trade Commission Act and misbranding of wool products in violation of the Wool Products Labeling Act. Headed by a Director and an Assistant Director, it comprises the Divisions of Litigation, Investigation, Wool Act Administration, and Medical and Chemical Opinions.

Bureau of Industry Cooperation.— This Bureau comprises the Division of Trade Practice Conferences and the Division of Stipulations. It is headed by a Director and an Assistant Director.

The Division of Trade Practice Conferences consists of a rulemaking unit, which is responsible for the initiation and conduct of trade practice conferences and the development of rules to the point of final promulgation; and a rule-administration unit, which handles matters concerning interpretation of and compliance with promulgated rules. The Assistant Director of the Bureau is chief of this Division.

The Division of Stipulations consists of a chief, assistant chief, and a staff of attorney-conferees. All matters considered appropriate

for settlement by the Commission's stipulation procedure are referred to this division for the negotiation of voluntary agreements to cease and desist from unlawful practices. The Division takes no part in the investigation or prosecution of any matter.

Bureau of Industrial Economics.— The Bureau of Industrial Economics acts as a general economic staff in obtaining and analyzing the economic information used by the Commission in developing its antimonopoly programs. It renders economic and accounting services to the legal staff in the investigation and trial of antimonopoly cases and in the enforcement of the Commission's orders in such cases. The Bureau performs those statutory functions of the Commission which relate to general economic surveys and investigations (as distinguished from legal investigations arising out of charges of violation of the law) of the practices and policies of corporations in interstate commerce. It prepares economic and financial reports. The work of the Bureau is in charge of a Director who is also Chief Economist. The Assistant Chief Economist, the Chief Accountant, and the Chief Statistician supervise the three operating divisions.

The Division of Economics conducts general economic surveys and investigations for the purpose of ascertaining the competitive practices, the nature and significance of monopolistic arrangements, and the degree of concentration in a given industry, and for the purpose of reporting on general economic conditions within the field of the Commission's jurisdiction. It assembles and analyzes economic information needed in the development of an antimonopoly program. In addition, it provides economic assistance at all stages in the preparation and conduct of legal cases, including the evaluation, from an economic viewpoint, of pricing policies and distribution practices in relation to the legal issues of collusive price-fixing and monopoly controls. Economic information in connection with trade practice conference proceedings is likewise furnished by this division.

Accounting services in connection with the investigation and trial of cases, as well as in connection with general economic investigations, are performed by the Division of Accounting. It prepares cost and price studies, and its staff members act as witnesses in cases arising under the Clayton Antitrust Act and the Federal Trade Commission Act. It also prepares the financial and cost data in general economic investigations.

The Division of Financial Reports collects, summarizes, and analyzes the financial operating statements of American corporations engaged in manufacturing, wholesale trade, and retail trade. On the basis of these data, it prepares quarterly reports on the financial position and operating results of the Nation's manufacturing industries and distributive trades.

Trial Examiners.— In the trial of formal complaints, the Commission has strictly followed the Administrative Procedure Act by setting up an independent staff of trial examiners¹ to assure all litigants a fair and impartial trial. These trial examiners do not come within any bureau or division of the Commission and are not subject to any direction or control other than administrative supervision by a Director and Assistant Director who are themselves qualified and active trial examiners.

Cases are assigned in rotation as far as practicable. The trial examiner is appointed at the time the complaint is issued and thereafter has complete control of the case, passing upon all preliminary and interlocutory motions and holding pretrial conferences. He takes testimony and receives evidence submitted in support of and in opposition to the allegations of the complaint. He rules upon the admissibility of testimony and exhibits, as well as upon motions submitted by the parties, and conducts the proceeding in accordance with the Administrative Procedure Act and the Commission's Rules of Practice. At the conclusion of the reception of evidence, and after the parties have been duly heard and their contentions considered, the trial examiner files an initial decision, which, unless appealed by the parties or docketed for review, becomes the decision of the Commission. The initial decision includes a statement of findings and conclusions upon all material issues of fact, law, or discretion presented on the record, together with the reasons supporting them, and an appropriate order.

Planning Council.— The Council is a central staff planning group bringing together the heads of major operating units of the Commission. It consists of the Assistant General Counsel in charge of Industry Cooperation as chairman; the Secretary and Executive Director, the General Counsel, and the Directors of the Bureaus of Antideceptive Practices, Antimonopoly, Industrial Economics, and Industry Cooperation. The primary function of the Council is that of planning, formulating, and recommending work projects, programs, and policies for the most effective utilization of the Commission's powers and duties in the public interest. It submits to the Commission a program of work to be undertaken each fiscal year and makes recommendations for the allocation of funds and personnel to carry it out. In addition to directing the Council's work, the Chairman of the Council assists the Chairman of the Commission in presenting the Commission's programs to the Bureau of the Budget and to the appropriation committees of the Congress. The Council has the further duty of studying and evaluating the progress and accomplishments of work programs and making reports and recommendations concerning them.

¹ Effective November 1, 1951, trial examiners were designated "hearing examiners." In this report, however, the former designation is used.

3

Economic Reports

FOR ALMOST A HALF CENTURY, the fact-finding and economic reporting functions of the Federal Trade Commission and its predecessor agency have constituted one of the Nation's most important instruments of antimonopoly action. This is indicated by the range and quality of reports issued under the enabling legislation, and by the influence of these investigations upon legislation and business practices.

Use of the Commission's reporting powers is of growing importance. As noted by a Hoover Commission task force, in reporting that the need for an administrative agency such as the Federal Trade Commission is greater today than in 1914: "Our industrial organization is more complex, larger concerns have grown in size and importance, trade practices in many industries form an intricate network of controls."¹

LEGISLATIVE HISTORY

A review of the legislative history of the Federal Trade Commission Act, and of the statute establishing the Commission's predecessor agency, the Bureau of Corporations, clearly establishes the Congressional intent that fact-finding and reporting functions should be extensively used as one of the principal means of curbing monopoly power. The Bureau of Corporations was established in 1903 in the Department of Commerce and Labor by legislation which empowered the Commissioner of Corporations to make "* * * diligent investigation into the organization, conduct, and management of the business of any corporation, joint stock company or corporate combination engaged in commerce among the several States and with foreign nations excepting common carriers * * * , and to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce, and to report such data to the President from time to time as he shall require; and the information so obtained or as much thereof as the President may direct, shall be made public."²

¹ The Commission on Organization of the Executive Branch of the Government (The Hoover Commission), Task Force Report on Regulatory Commissions, p. 125.

² 32 Stat. 828.

In January 1914, President Wilson delivered a message on antitrust legislation in which he proposed the establishment of a trade commission with fact-finding powers. He said:

The opinion of the country * * * demands such a commission * * * as an indispensable instrument of information and publicity, as a clearinghouse for the facts by which the public mind and the managers of great business undertakings should be guided * * *.

The bill subsequently introduced in the House was described by the chairman of the House Judiciary Committee as involving "the fundamental idea that a trade commission shall be created * * * with full inquisitorial powers into the operation and organization of all corporations engaged in interstate commerce, other than common carriers."³ In reporting favorably on a later but similar bill proposing establishment of an interstate trade commission, the House Committee on Interstate and Foreign Commerce stated:

It must be remembered that this Commission enters a new field of governmental activity. The history of the Interstate Commerce Commission is conclusive evidence that the best legislation regarding many of the problems to come before the Interstate Trade Commission will be produced from time to time as the result of the reports of the Commission after exhaustive inquiries and investigation. No one can foretell the extent to which the complex interstate business of a great country like the United States may require, alike for the benefit of the businessman and for the protection of the public, new legislation in the form of Federal regulations, but such legislation should come by a sound process of evolution * * *. It is largely the experience of the independent Commission itself that will afford Congress the accurate information necessary to give to the country from time to time the additional legislation which may be needed.⁴

One student of the legislative history of the act, in reviewing the consideration of the House bill, noted that:

The opposition * * * came not from those who thought the bill went too far, but that it did not go far enough * * *. There was singular agreement as to the wisdom of establishing an independent, non-partisan fact-finding body, and no attempt was made to reduce the broad inquisitorial powers * * *. One cannot read this debate without concluding that the final bill would never have been passed had it been understood as a Commission with * * * restricted powers * * *.⁵

Congressional debates preceding enactment of the Federal Trade Commission Act similarly emphasize the intent to confer broad investigative powers. Thus, Senator Cummins stated:

* * * This bill does confer upon the commission the most extensive inquisitorial powers * * * we are really transferring to the Federal Government the right of visitation which has from time immemorial existed in the sovereignty which creates the corporation. Although we have put it in many words, in

³ Sen. Rep. No. 597, 63rd Cong., 2nd Sess., p. 7.

⁴ H. R. Rep. No. 533, 63rd Cong., 2nd Sess., p. 8.

⁵ Milton Handler, 28 Col. L. R. 728.

many different ways, it really means that as to corporations engaged in commerce * * * among the States or with foreign nations, the Federal Government shall have the same right to inquire into their affairs as does the Government which created them.⁶

The broad scope of the Commission's authority to investigate is indicated by the following excerpts from section 6 of the Federal Trade Commission Act which gives the Commission power:

To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce * * *

To require, by general or special orders, corporations engaged in commerce * * * to file with the Commission * * * reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, [and] management * * * of the respective corporations * * *

* * * To make investigation * * * of the manner in which [a consent] decree has been or is being carried out * * *

* * * To investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

* * * To investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts * * *

* * * To classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

To investigate * * * trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States * * *

To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

SCOPE OF COMMISSION'S REPORTS

The wide range of the Commission's economic reports is indicated in the appendix (page 140) in which they are listed and briefly summarized.

During World War I the Commission conducted investigations in connection with the work of the War Industries Board. Most of these reports consisted of cost studies which were used for price determination and related purposes. The reports during this period included:

11 for the President.

71 for the War Industries Board.

39 for the Navy Department.

40 for the War Department.

32 for the Fuel Administration.

9 for the Public Printer.

18 for the Post Office Department.

12 for the Railroad Administration.

4 for the Tariff Commission.

8 for the Food Administration.

4 for the War Trade Board.

6 for the Food Purchase Board.

20 for various other agencies.

⁶ 51 Cong. Rec. 11448.

The effectiveness of the "spotlight of publicity" was demonstrated by the Commission early in its history. In the period immediately following World War I, the rapid rise in the cost of living was a serious problem. At Congressional request, the Commission undertook to collect and publish current figures showing the costs and the wholesale and retail prices in basic industries. Prices in one of the first industries covered in the survey promptly dropped, but the project was not carried to completion largely because of court decisions limiting the Commission's power to obtain data for economic investigations. Many of the restrictive effects of these early court decisions appear to have been overcome, however, by later decisions. During the latter 1920's and early part of the 1930's, the Commission was concerned with exhaustive investigations of public utilities and chain stores. From 1938 to 1941, it was closely associated with the work of the Temporary National Economic Committee in its study of the concentration of economic power, with particular reference to antitrust legislation, concentration in industry, and the basing point system.

During the early part of World War II, the Commission, at the request of price control agencies, made cost studies of several industries, including steel, chemicals, and bread.

In its economic reporting work since World War II, the Commission has focused most of its emphasis on two major economic problems—international cartels and concentration in the domestic economy. Thus, its reports in recent years may be classified as follows:

I. Reports on International Cartels:	Year Issued
1. International Phosphate Cartels -----	1946
2. The Copper Industry -----	1947
3. The Sulphur Industry and International Cartels -----	1947
4. International Electrical Equipment Cartel -----	1948
5. International Steel Cartels -----	1948
6. The Fertiliser Industry -----	1949
7. International Cartels in the Alkali Industry -----	1950
8. International Petroleum Cartel -----	(?)
 II. Reports on Economic Concentration:	
1. Growth and Concentration in the Flour-Milling Industry -----	1947
2. Corporate Mergers and Acquisitions -----	1947
3. The Merger Movement -----	1948
4. Concentration of Productive Facilities -----	1950
5. Divergence Between Plant and Company Concentration -----	1950
6. Interlocking Directorates -----	1950
7. A List of 1,000 Large Manufacturing Companies, Their Subsidiaries and Affiliates, 1948 -----	1951
8. Iron Ore -----	(?)

⁷ Near completion but not published as of June 30, 1951.

III. Other Reports:	Year Issued
1. Resale Price Maintenance	1945
2. Wholesale Baking Industry, Part I, Waste in the Distribution of Bread; and Part II, Costs, Prices, and Profits	1946-47
3. Manufacture and Distribution of Farm Implements	1948
4. Rates of Return in Selected Industries	⁸ 1948-51

ECONOMIC REPORTING IN 1951

During the fiscal year 1961, the Commission published two economic reports, and work on two others was near completion.

The report on Rates of Return for 520 Identical Companies in 25 Selected Manufacturing Industries, 1940, 1947-50 is the fourth in a series transmitted to Congress by the Commission, each comparing prewar and postwar rates of return on stockholders' investment, after taxes, for identical companies in 25 narrowly defined and homogeneous manufacturing industries. The industries covered by the study constitute a substantial segment of the economy, with their combined assets in 1940 accounting for about half the total assets of all manufacturing industries.

The report showed that in all but 3 of the 25 manufacturing industries, profit rates were substantially higher in 1950 than in 1940, and that in all but 6 of the industries profit rates in 1950 were higher than in 1949.

The report contains a comparison of the rate of return of the 4 largest companies with the rate of return for all other companies reported for the industry. In 16 of the 25 industries, rates of return tended to be higher for the 4 largest companies than for the remaining corporations.

The second report published in fiscal 1951 was a list of 1,000 large Manufacturing Companies, Their subsidiaries and Affiliates, 1948. It shows, for each of the 1,000 largest manufacturing corporations which publish financial statements, the percentage of stock interest held by the corporation in each of its subsidiaries and affiliates.

The parent corporations are grouped in 21 major industries and ranked in each industry on the basis of their total assets in 1948.

The 200 largest manufacturing corporations had a total of 4,722 subsidiary and affiliate companies, and the 500 largest had a total of 6,281 subsidiaries and affiliates. These totals represent, respectively, 62.5 and 82.1 percent of the entire number of subsidiaries and affiliates listed.

The listing affords a means of identifying the ramifying interests of the larger corporations and the variations in practice among the large companies in organizing or acquiring subsidiaries and in seeking

⁸An annual report beginning in 1948.

diversification through operations in industries other than that in which they are principally occupied.

The Commission began the preparation of this listing of corporations as a part of its study of economic concentration. However, as a result of numerous requests, particularly from defense agencies, it became evident that other Government departments were undertaking statistical studies of one type or another which required the preparation of such a list. In order to prevent duplication of effort and provide a list which could serve the purposes of all agencies, as well as private organizations, the Commission decided to issue the list as a published document.

Of the two reports on which work was largely completed, but not published, in fiscal 1951, one was entitled International Petroleum Cartel. This report will describe the extent of control of the international petroleum industry by seven international oil companies. The study deals with the character and extent of joint action through international and local marketing agreements, the development of common ownership of reserves and production in the Middle East, Venezuela, and other producing areas, and the major patterns of contracts for the purchase and sale of oil, particularly in the Middle East and in Venezuela.

The other report, which was largely completed but not published in fiscal 1951, is on the subject of iron ore. It is based upon information obtained directly from the major iron ore producing and consuming companies. It examines the impact on competition in the steel industry of the shift from almost complete reliance on domestic high-grade ore supplies to substantial reliance on (a) foreign sources, and (b) lower grade domestic sources.

INDUSTRIAL FINANCIAL REPORTS

In addition to the economic reporting described above, the Commission continued, in cooperation with the Securities and Exchange Commission, the preparation and publication of quarterly industrial financial reports. These have been published for each quarter beginning with the first quarter of the calendar year 1947. The Securities and Exchange Commission collects reports from corporations whose securities are registered on a national stock exchange; the Federal Trade Commission collects reports from unregistered corporations. The Commission's reporting program is a continuation of statistical and economic studies carried on for many years pursuant to the authority of Section 6 of the Federal Trade Commission Act.

The primary purpose of the quarterly industrial financial reports is to provide an indication of the current financial condition of all United States manufacturing corporations. They show:

1. Quarterly estimates for specific items of income, expense, assets, liabilities, and net worth for all United States manufacturing corporations, for different sizes of manufacturing corporations, and for major manufacturing industries.

2. Trends in various financial items by corporate size class and by major manufacturing industry group and comparisons of these financial items among different corporate size classes and among different major industries.

3. Financial indicators used in formulating stabilization controls during a mobilization period.

The reports have become the only reliable source of information about current profits of small manufacturers (figs. 1 and 2); they are the only complete source as to the current financial status of major manufacturing industries (fig. 3). The reports are used extensively by the Council of Economic Advisers, the Federal Reserve Board, the Department of Commerce, the Treasury Department, the Department of Agriculture, the National Military Establishment, and by other Government agencies, banks, manufacturing corporations, trade associations, labor unions, insurance companies, other business enterprises, public accountants, attorneys, investors, universities, and private research organizations. As described in chapter VIII (page 89) the Commission's financial reporting program has been expanded to include both wholesale trade corporations and retail trade corporations, beginning with the first quarter of the calendar year 1951. These reports have not yet been published.

All manufacturing corporations have been classified in the quarterly industrial financial reports according to the amount of their total assets, as follows:

- (1) Corporations with assets of \$100,000,000 and over.
- (2) Corporations with assets of \$5,000,000 and over, but less than \$100,000,000.⁹
- (3) Corporations with assets of \$1,000,000 and over, but less than \$5,000,000.
- (4) Corporations with assets of \$250,000 and over, but less than \$1,000,000.
- (5) Corporations with assets of less than \$250,000.

⁹ This group covers a very wide range of asset sizes. To determine more accurately the characteristics of different segments of this group, the Commission has begun the process of dividing it into three separate groups:

- (a) Corporations with assets of \$50,000,000 and over, but less than \$100,000,000.
- (b) Corporations with assets of \$10,000,000 and over, but less than \$50,000,000.
- (c) Corporations with assets of \$5,000,000 and over, but less than \$10,000,000.

FIGURE 1

ANNUAL RATES OF PROFIT FOR MANUFACTURING CORPORATIONS
BY TOTAL ASSET SIZE GROUPS, 1947-1950

GRAPHIC—SEE IMAGE

FIGURE 2

RATES OF PROFIT*
MANUFACTURING CORPORATIONS
TOTAL ASSET SIZE GROUPS, BY QUARTERS, 1947-1951

GRAPHIC—SEE IMAGE

* Ratio of income before and after taxes to stockholders' equity on an annual rate basis, based on quarterly rates, table 4, multiplied by four.

Source: Federal Trade Commission - Securities and Exchange Commission

FIGURE 3

RATES OF PROFIT* MANUFACTURING CORPORATIONS INDUSTRY GROUPS, BY QUARTERS, 1947-1951

GRAPHIC—SEE IMAGE

Ratio of income to stockholders' equity on an annual rate basis (based on quarterly rates, multiplied by four) before and after provisions for Federal income and excess profits taxes.

Source: Federal Trade Commission - Securities and Exchange Commission

FIGURE 3 (Continued)
RATES OF PROFIT*
MANUFACTURING CORPORATIONS
INDUSTRY GROUPS, BY QUARTERS, 1947-1951

GRAPHIC—SEE IMAGE

Ratio of income to stockholders' equity on an annual rate basis (based on quarterly rates, multiplied by four) before and after provisions for Federal income and excess profits taxes.

Source: Federal Trade Commission - Securities and Exchange Commission

FIGURE 3 (Continued)
RATES OF PROFIT*
MANUFACTURING CORPORATIONS
INDUSTRY GROUPS, BY QUARTERS, 1947-1951

GRAPHIC - SEE IMAGE

* Ratio of income to stockholders' equity on an annual rate basis (based on quarterly rates, multiplied by four) before and after provisions for Federal income and excess profits taxes.

Source: Federal Trade Commission - Securities and Exchange Commission

The graph in figure 1 shows the significant change which has taken place since 1947 in the rates of profit (ratio of income to stockholders' equity) of different size classes of manufacturing corporations, both before and after provisions for Federal income and excess profits taxes. In the calendar year 1947, the highest rate of profit was attained by those manufacturing corporations with assets of \$1,000,000 and over, but less than \$5,000,000. Second in percentage of profit was the group with assets of \$250,000 and over, but less than \$500,000; third was the group with assets of \$5,000,000 and over, but less than \$100,000,000; fourth was the group with assets of less than \$250,000; and last was the group with assets of \$100,000,000 and over. In the years 1948, 1949, and 1950, however, the rates of profit for these groups of manufacturing corporations were directly related to their size: the group of largest corporations had the largest rate of profit; the group of smallest corporations had the smallest rate of profit; the three middle groups similarly had rates of profit directly related to their size. This was true both before and after taxes in 1948, 1949, and 1950 with the sole exception that, in 1948, the next to largest group had the highest rate of profit before taxes.

Figure 2 shows, on a quarterly basis, the data given in figure 1 on an annual basis.

Figure 3 shows the varying rates of profits for manufacturing corporations in 22 different industry groups for each 3-month period from the first quarter of the calendar year 1947 to 1951. It reflects the varying rates of profit on an annual basis (quarterly rates multiplied by 4) both before and after provisions for Federal income and excess profits taxes. Also shown is the varying proportion of profits accounted for by provision for Federal income and excess profits taxes.

The data collected for the quarterly industrial financial reports have been utilized repeatedly by the Commission for two related programs. One of these projects is the annual publication of rates of return on stockholders' investment for identical companies in 25 selected manufacturing industries. The data are also used in connection with a continuing study of the concentration of productive facilities. The first comprehensive report resulting from this study was for the year 1947. It is anticipated that similar reports, when published, will provide measures of the trend of concentration both generally and in specific manufacturing industries.

The Commission has undertaken to increase the size of the sample of corporations included in the quarterly industrial financial reports. The purpose is to make available financial data for narrowly defined industries and thus increase the usefulness of the reports. The new and larger sample for manufacturing corporations was to be used

in the third quarter of the calendar year 1951. The sample of retail trade corporations and of corporations classified as merchant wholesalers was used beginning with the first quarter of the calendar year 1951. The financial reporting program has not yet been extended, however, to include wholesale trade corporations other than merchant wholesalers, mining corporations, and certain holding companies which might properly be classified in the manufacturing, mining, wholesale trade, or retail trade segments of industry.

EFFECTS OF ECONOMIC REPORTS

The Commission's economic reports have had substantial influence on legislation and business practices and policies.

Among the important laws enacted as a direct or indirect result of Commission reports are the Packers and Stockyards Act (1921), The Grain Futures Act (1921), the Radio Act (1927), the Communications Act (1934), the Perishable Agricultural Commodities Act (1930), the Public Utility Holding Company Act (1935), the Securities Act (1933), the Federal Power Act (1935), and the Robinson-Patman Antidiscrimination Act (1936), amending the Clayton Antitrust Act.

Following World War II, the Commission's reports on mergers and economic concentration furnished information which was basic to the decision of the 82d Congress to amend section 7 of the Clayton Act. For nearly a quarter of a century the Commission had been urging Congress to close the loophole in the antitrust laws against mergers and acquisitions which injure competition or promote monopolies. Section 7 of the original Clayton Act, as enacted in 1914, was directed against the method of uniting competing companies that prevailed at the time—the purchase by one company of the stock of another. However, the intent of Congress in enacting section 7 was evaded by the practice of making acquisitions through the purchase of assets rather than, or in addition to, the purchase of stock. The facts developed by the Commission and presented to Congress on the prevalence of corporate mergers constituted the principal body of information used by members of Congress in supporting the passage of this legislation.

The influence of the Commission's economic reports has not been limited to legislation but has also extended to business practices and policies, including those relating to prices. Thus, the investigation of profiteering conducted at the request of the House Appropriations Committee immediately after World War I resulted in substantial savings to consumers. For example, inquiries by the Commission directed to dealers in coal as to origin and destination of shipments,

and prices paid and received, resulted in sharp reductions in prices. Other examples illustrating the power of publicity as a means of correcting economically undesirable business practices and policies include the following:

A 1920 report on the Causes of High Prices of Farm Implements disclosed a scheme of controlling prices under the guise of a cost study conducted by several subdepartments of a trade association. This method of price control was promptly abandoned when the facts regarding it became public, and competition thereupon reduced prices.

A similar device was described in the Commission's Report on House Furnishing Industries. Shortly after the Commission published the facts in 1923, this method of controlling prices was likewise abandoned, with resultant reductions in prices to consumers.

In a report on the cotton trade in 1924, attention was called to the need for certain reforms in trading practices, including southern warehouse delivery on New York futures contracts. The New York Cotton Exchange voluntarily adopted the Commission's recommendation.

The Commission's 1938 Report on the Agricultural Implement and Machinery Industry pointed out that under the price leadership of a small number of dominant companies, prices of farm machinery showed smaller decreases during the depression, and greater subsequent increases during the recovery period than either the prices of farm products or the prices of comparable consumer products. Following publication of that report, reductions were made in the prices of principal items of farm machinery which were estimated to represent an annual saving to farmers of \$40,000,000, or more than 20 times the Commission's appropriation for the fiscal year 1938.

LIMITATIONS ON ECONOMIC REPORTING

The scope and number of the Commission's economic reports were initially limited by court decisions and in recent years have been restricted by the resources available for such work. The Hoover Commission task force on regulatory commissions summarized these limitations as follows:

*** The Commission's investigatory powers were first limited in the 1920's by a supreme court decision restricting its use of subpoenas, and were later curtailed by limitations on appropriations and on investigations upon resolution of either House. Since 1935 investigations at legislative request have required the concurrent resolution of both Houses and specific appropriation of funds to finance the cost of investigation.¹⁰

Insofar as the judicial restraints on the use of the Commission's investigating powers are concerned, the Supreme Court has recently cleared away many of the obstacles imposed by previous court

¹⁰ At p. 123 of report cited in footnote 1, p. 16.

decisions. The Morton Salt case,¹¹ decided February 6, 1950, constitutes a sweeping affirmation of the Commission's authority to obtain information in fulfillment of its duties. The Court said:

* * * an administrative agency charged with seeing that the laws are enforced * * * has a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the grand jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.

Regarding authority of the Commission to obtain information under section 6, the court stated that, "* * * we find nothing that would deny its use, for any purpose within the duties of the Commission * * *."

The Congressional action in 1935, briefly described by the Hoover Commission task force report, involves two limitations upon the Commission's power to make reports at the direction of Congress. The first is the requirement that such an investigation be made only pursuant to a concurrent resolution of both Houses and not in response to a resolution by either House alone. Most of the Commission's earlier investigations were made in response to a separate resolution by one House. Since 1935, there have been only three concurrent resolutions directing that the Commission undertake investigations. The second limitation consists in the requirement that an investigation pursuant to a concurrent resolution shall be made only after a specific appropriation has been made for that specific investigation. The effect of this limitation is to prevent the Commission from using any portion of its regularly appropriated funds to comply with such a concurrent resolution, and to make it necessary for a specific allocation to be made by the appropriations committees before the investigation can be undertaken.

Investigations which the Commission has authority to undertake upon its own motion have been limited because of the small staff available for this purpose. During the period from 1924 to 1930, the Commission's staff included an average of 33 economists, as compared with 18 in 1951. In the latter part of the 1920's, economists constituted about 10 percent of the Commission's total personnel, while from 1937 to 1951 they have never exceeded 3 percent of the total.

Funds expended by the Bureau of Industrial Economics during fiscal 1951 totaled \$387,865. The breakdown was as follows:

Director's Office	\$19,062
Division of Accounting	97,390
Division of Economics	165,491
Division of Financial Reports	105,922

¹¹ U. S. v. Morton Salt Co., 338 U. S. 632.

NEED FOR ECONOMIC REPORTING

The importance of continuing and, in fact, expanding the Commission's economic reporting function has repeatedly been stressed by investigating bodies and authorities in the field of antitrust law.

Thus the Temporary National Economic Committee, in 1941, unanimously recommended expansion of this type of work:

One of the striking facts of experience in national economic policy formulation during the past decade, amply demonstrated by the experience of this committee, and more recently emphasized by the pressing problems of industrial mobilization confronting the national defense authorities, is the inadequacy of factual information concerning the structure and functioning of our industrial economy. * * *

* * * Fact gathering must be continuous so that essential economic information will be available to businessmen, to Government, and to the public.¹²

In a report by the staff of the Committee on Small Business of the House of Representatives, published by the Committee in 1946, the Commission's economic reporting work was compared to market analyses prepared by large corporations:

Just as a big business needs to have a market analysis department to advise on where it ought to direct its efforts, the Government's antitrust forces need a trained staff to keep abreast of changing practices and changing problem areas. The staff considers this function to be the most important one which FTC's Economics Division could perform. * * *¹³

The report also stated that studies of the concentration problem should be "centered" in the Federal Trade Commission:

Federal Trade Commission now has the authority to make continuing investigations of the extent and seriousness of concentration on an industry-by-industry and trade-by-trade basis. It is recommended that such investigations be centered in the Federal Trade Commission. If this is done, the efforts of the Government to reduce concentration can then be directed on the basis of the seriousness of the problem rather than on the processing of individual complaints. It is most important to prevent monopolistic practices in their inception. This can be done only through a systematic approach to the problem on an industry-by-industry basis.

In the same vein, the Hoover Commission task force on the regulatory commissions came to the conclusion that:

There is need for an economic staff systematically surveying our economy; probing for industrial and economic practices which threaten the elimination of competitive conditions; identifying restrictive tendencies before they become too solidly entrenched; analyzing the basic disorders found and formulating methods for their practical correction. Such a procedure gives the policy of the statutes continuous vitality in terms of current conditions. It also places stress on the basic purpose of the legislation—the practical correction of trade

¹² 77th Cong., 1st sess., Sen. Doc. No. 35, Final Report and Recommendations of the Temporary National Economic Committee, March 31, 1941, p. 31.

¹³ 79th Cong., Staff Report to the Monopoly Subcommittee, U. S. v. Economic Concentration and Monopoly, 1946, p. 23.

practices to bring them in conformity with the public interest. These are the basic purposes of the Federal Trade Commission Act. * * *

In addition, the Federal Trade Commission can and should constitute a reservoir of information on the structure of the economy and of specific industries. This information should be available to the antitrust agencies and to other Government agencies, such as those concerned with defense. By its reports to Congress and the public, the Commission should keep them abreast of changes in the structure of the economy and aware of needed legislative action. * * *

The economic work of the Commission should be greatly expanded if the Commission is to approximate its proper role in the maintenance of competition."¹⁴

¹⁴ At pp. 124-128 of report cited in footnote 1, p. 16.

4

Antimonopoly

Work

THE PRESERVATION of the American economic system of free competitive enterprise is the basic objective of the statutes administered by the Commission. These laws entrust to the Commission the challenging task of preventing the free enterprise system from being stifled or fettered by monopoly or monopolistic practices. They are aimed at keeping competition both free and fair.

In its antimonopoly program, therefore, the Commission makes investigations and brings legal proceedings designed to free the channels of interstate trade from oppressive restraints so that buyers may have the widest possible freedom of choice, with prices determined by the interplay of competitive forces and offered without monopolistic control or discrimination.

The principal statutory weapons for the realization of this goal are the Federal Trade Commission Act and the Clayton Antitrust Act. Both these basic statutes were passed in 1914 and both have been amended to keep pace with the increasing complexities of our economic system.

The Federal Trade Commission Act lays down a general prohibition against "unfair methods of competition" and other "unfair" practices. The Clayton Act outlaws specific practices which experience has shown to be instruments of monopoly. Under both statutes, the Commission undertakes to halt monopolistic and other unfair practices in their early stages. Although not vested with power to punish, it is empowered to order discontinuance of practices which it finds to be "unfair," promotive of monopoly, or tending to substantially lessen competition.

The Commission has applied the broad prohibitions of the Federal Trade Commission Act against numerous practices which, in the words of the Supreme Court, are "against public policy because of their dangerous tendency unduly to hinder competition or create monopoly." The cases brought under this statute involve boycotts, collusive price-fixing, and other business conduct, whether individual or by combination, which is in restraint of trade.

Cases under the Clayton Act relate to unjust discriminations in price, exclusive-dealing and tying contracts and arrangements, acquisition of the stock or assets of competitors, and interlocking directorates. These practices are unlawful if they tend to monopoly or a substantial lessening of competition.

Investigation and trial of cases involving restraints of trade and related practices are the responsibilities of the Bureau of Antimonopoly.

LEGAL CASE WORK

Orders to cease and desist	23
Complaints issued	29
Cases dismissed or closed	7
Cases investigated	35

Orders Against Monopolistic Practices

One of the major accomplishments of the fiscal year was the negotiation of a consent settlement in the American Iron and Steel Institute case. The order, which was tentatively approved in June 1951 but not formally entered until August, prohibits the Institute and 90 steel producers from entering into, cooperating in, carrying out, or continuing "any planned common course of action, understanding, or agreement" to adopt, establish, fix, or maintain prices—or any element thereof—at which steel products shall be quoted or sold.

The order was based on findings that "unfair" practices of the steel companies "tended to lessen competition" and were "oppressive to the public interest."

One of its provisions forbids any agreement or planned common course of action to quote or sell steel products at prices "calculated or determined * * * in accordance with any system or formula which produces identical price quotations or prices or delivered costs, or which establishes a fixed relationship among price quotations or prices or delivered costs, or which prevents purchasers from securing any advantage in price in dealing with one or more of the respondents as against any of the other respondents."

Another is directed against any agreement or planned common course of action to fail "to quote or to sell and deliver any steel products f. o. b. at the plant of manufacture thereof." The order includes several other prohibitions against concerted action relative to the pricing of steel products ranging from ingots to nails.

In interpreting these and other provisions, the order says it is understood that:

The Federal Trade Commission is not considering evidence of uniformity of prices or any element thereof of two or more sellers at any destination or destinations alone and without more as showing a violation of law.

The Federal Trade Commission is not acting to prohibit or interfere with delivered pricing or freight absorption as such when innocently and independently pursued, regularly or otherwise, with the result of promoting competition.

Under the terms of the settlement, the respondents consented to entry of the findings, conclusion, and order and agreed not to appeal to the courts. Although they did not admit the charges of the complaint or the findings of the Commission, they agreed not to contest them.

In issuing its decision, the Commission praised counsel for the steel producers, as well as its own staff, for reaching a settlement and thereby avoiding further prolonged litigation. It said the order provides "appropriate relief in the public interest" and expressed the belief that it will promote "free and fair competition in a basic industry vital to the national welfare in peace and in war."

Seven other orders were directed against combinations and conspiracies in restraint of trade. In the Corn Products Refining Co. case, nine manufacturers of corn derivatives, such as corn starch, corn syrup, and corn oils, and seven of their sales subsidiaries were prohibited from combining to fix prices and from engaging in unlawful price discriminations. The firms covered by the order account for 95 percent of the corn derivatives manufactured and sold in the United States.

The order requires the respondents to refrain from entering into or continuing, among other things, any agreement whereby prices are established and maintained through concerted use of a basing point or zone system of pricing. It outlaws other devices used for collusively fixing prices, including the exchange of current and prospective price information.

As in the steel case, this order was entered with the consent of the respondents. While not admitting the facts found or the conclusions reached by the Commission, they agreed not to contest them or appeal from them.

Avoiding the necessity of costly and time-consuming litigation, settlement of these cases resulted in orders designed to restore the benefits of competition in two basic industries.

Another price-fixing case involved 14 manufacturers of vitrified clay sewer pipe and their trade association, Clay Products Association, Inc., Chicago. The order requires the termination of an admitted combination and conspiracy to fix the prices of sewer pipe and fittings. It specifically outlaws concerted use of a zone pricing system which results in "matching" of prices on a delivered basis.

Douglas fir plywood products and Douglas fir doors were the subject of two proceedings resulting in orders prohibiting agreements to fix prices and otherwise restrain trade. One order ran against Douglas

Fir Plywood Association,* Tacoma, Wash., and 15 corporations manufacturing or distributing Douglas fir plywood products; the other, against Fir Door Institute,* also of Tacoma, and 8 corporations manufacturing or selling Douglas fir doors.

Agreements to fix prices and curtail production of twine and cordage products were forbidden in two other cases. One was against Bibb Manufacturing Co., Macon, Ga, and eight other manufacturers of such twine products as cotton wrapping twines, sewing twines, polished twines, tobacco twines, pea twines, bean twines, hop twines, and hose cord. The other involved Samson Cordage Works, Boston, and six other manufacturers of such cordage products as cotton sash cords, awning cords, and clotheslines.

The Commission also prohibited a trade-restraining combination among jobbers of bicycles and bicycle equipment and manufacturers of bicycle parts, materials, and accessories. Finding that competition had been stifled in the sale of bicycles and bicycle equipment, with a "dangerous tendency" to create a monopoly, the Commission issued a cease and desist order against Cycle Jobbers Association of America, Inc., Boston, Cycle Parts and Accessories Association, New York, and their members.

In four separate cases, the Commission prohibited what it called "unreasonable" restraints on competition in the sale, lease, or distribution of advertising or commercial films. Producer-distributors of the films cited in the orders were Reid H. Ray Film Industries, Inc., St. Paul, Minn.; Alexander Film Co.,* Colorado Springs, Colo.; United Film Service Co., Inc.,* Kansas City, Mo; and Motion Picture Advertising Service Co., Inc.,* New Orleans. Each sells, leases, or otherwise furnishes commercial films to advertisers and contracts with motion picture theaters to show them on their screens.

Each company was prohibited from entering into contracts with theaters whereby it obtains for more than one year exclusive rights to the screen for the showing of advertising films. The four companies, in the aggregate, had exclusive-screening contracts with 75 percent of the United States theaters which show advertising films, according to the findings. When such exclusive-screening contracts extended for more than one year, the Commission held, the effect was to limit the outlets for competitive films and to deny competitors the opportunity to obtain screen space. In some instances, competitors were forced out of business because they could not obtain theaters in which to exhibit their advertising films.

* Cases marked with an asterisk were pending for review in court at the close of the year. See page 46 for court cases.

Another order under the Federal Trade Commission Act prohibited a merchandising plan found to constitute a monopolistic restraint of trade in the sale and distribution of Armo hair canvas used for interlining and facing women's garments. Arms Textile Manufacturing Co., Philadelphia, and its sales agent were ordered to stop entering into or carrying out agreements whereby retailers and buying agencies undertake to require manufacturers or suppliers from whom they buy untrimmed coats and suits to use Armo hair canvas as interfacings or linings; to require manufacturers or suppliers to attach to garments tags, stamps, or labels showing that the Armo product was used; or to report to respondents the names of manufacturers who refuse to use Armo products.

The Commission found that the agreements constituted an effort to "coerce" and "intimidate" coat and suit manufacturers into using Armo products exclusively and to prevent them from buying competitive products through preference based on quality, price, or other competitive factors. According to the findings, the result was prevention of "normal, free and unrestrained competition" and a "dangerous tendency" toward monopoly.

In another case, Automatic Voting Machine Corp., Jamestown, N. Y., the largest voting machine manufacturer in the United States, was ordered to stop "harassing" its sole important competitor. The order prohibits false disparagement of the competitor and its machines and the instigation of "groundless" lawsuits against purchasers or prospective purchasers of the machines.

One order was directed against exclusive-dealing contracts in violation of Section 3 of the Clayton Antitrust Act. It prohibits Horlicks Corp., Racine, Wis., from making sales or contracts for the sale of its malted milk products on the condition that the purchaser shall not use or deal in the merchandise of Horlicks' competitors. The Commission found the effect of such arrangements may be substantial lessening of competition and a tendency toward monopoly.

In addition to the Corn Products case (page 36), three cases involved price discriminations violative of section 2 (a) of the Clayton Act. By separate orders, two cement companies—Monolith Portland Cement Co., Los Angeles, and Ideal Cement Co., Denver—were directed to refrain from unlawfully discriminating in price against customers who take delivery of cement by truck. The orders have the effect of preventing these companies from charging purchasers who transport cement by truck a price 20 cents per barrel higher than that charged purchasers transporting the cement by rail freight.

Discrimination in the sale of animal feeds was prohibited in an order against Central Soya Co., Inc., Fort Wayne, Ind., and two subsidiaries. A "patronage dividend plan" in connection with the

sale of Master Mix animal feed products was found to involve illegal price discriminations.

Payment or receipt of brokerage fees in violation of section 2 (c) of the Clayton Act was prohibited in four orders. This section makes unlawful, in connection with interstate transactions, the payment by a seller or the receipt by a buyer of brokerage fees on purchases made by such a buyer in his own behalf or by an agent or other intermediary acting for him or subject to his control.

Companies cited in the orders were Bonner Packing Co., Fresno, Calif.; Pan America Food Co., Inc., New York; Hesmer, Inc., Evansville, Ind.; and Pacific Gamble Robinson Co., Seattle.

In a proceeding under section 2 (e) of the Clayton Act, Appleton-Century-Crofts, Inc., New York, was ordered to stop discriminating among competing purchasers of its books by furnishing to any customer services or facilities not accorded on proportionally equal terms to all competing customers. The order is specifically directed against discrimination in accepting the return for credit of unsold books.

Complaints Charging Monopolistic Practices

The Commission issued 29 antimonopoly complaints during the fiscal year. Seven charged violation of the Federal Trade Commission Act; 14, violation of the Clayton Antitrust Act; and 8, violation of both statutes.

One of the complaints charging violation of both statutes cited five Standard Oil Companies and Atlas Supply Co., Newark, N. J., which they control. It charged them with monopolistic practices in the purchase and resale of tires, batteries, and other automobile accessories. In addition to alleging combination and conspiracy in restraint of trade, the complaint also charged unlawful receipt of brokerage fees and price discriminations.

According to the complaint, Standard Oil Co. of Ohio, Standard Oil Co. of Kentucky, Standard Oil Co. of California, Standard Oil Co. of Indiana, and Standard Oil Co. of New Jersey, with their wholly owned subsidiary Atlas, combined to monopolize trade and suppress competition. Among other things, the complaint said they sought to exert the influence of their combined purchasing power in jointly buying TBA products for the purpose of obtaining from sellers prices, discounts, rebates, and allowances which were preferential to those available to their competitors.

Six other complaints charged combination and conspiracy to suppress competition. In one, Sayles Finishing Corp., Saylesville, R. I., and 10 other manufacturers of book cloth were charged with combining to fix prices and otherwise restrain competition, with the effect

of "substantially enhancing prices" and maintaining them at "artificial levels." The products of the respondents are used in binding books.

Similar charges were contained in a complaint against Cordage Institute, New York, and 18 manufacturers of hard fiber rope, cordage, and twine. The products involved are used extensively by the Navy and all branches of the Armed Forces, as well as by such enterprises as steamship companies, the fishing industry, railroads and other common carriers, steel companies, coal companies, oil companies, farmers, and ranchers. The respondent companies are said to manufacture and sell 80 percent of the hard fiber rope and cordage and 65 percent of the hard fiber twine produced and sold in the continental United States.

Two other price-fixing cases involving twine and cordage in which complaints were issued during the fiscal year resulted in cease-and desist orders (page 37).

Mink Traders Association, Inc., New York, and its 70 members were charged with conspiracy to suppress competition in the purchase of mink fur pelts and in the manufacture and sale of mink fur products.

Tobacco was the commodity involved in another case in which combination and conspiracy were alleged. The complaint charged Marlboro Tobacco Board of Trade and its members with combining to suppress competition in the sale and purchase of tobacco in Maryland's Upper Marlboro market area. It alleged, among other things, that the respondents conspired to prevent the successful operation of a tobacco auction warehouse which was a potential competitor of warehouses holding Board membership. Boycott and exclusion of the new warehouse from Board membership were among the methods used to perpetuate the "virtual monopoly" of the Board's member warehouses, according to the complaint.

Six of the country's largest publishing houses were charged in separate complaints with engaging in unlawful practices which give book clubs an unfair competitive advantage over retail book stores. The companies cited were: Doubleday & Co., Inc., Garden City, Long Island, N. Y.; Houghton Mifflin Co. and Little, Brown & Co., both of Boston; and Random House, Inc., Harper & Brothers, and Simon & Schuster, Inc., all of New York.

Among the publishers' practices alleged to be unfair methods of competition were these:

Leasing printing plates of selected titles to book clubs exclusively and denying this privilege to retail book sellers.

Requiring retailers, but not the clubs, to sell at fixed minimum resale prices.

Requiring retail book sellers who have not executed resale price maintenance contracts with the publishers to sell at fixed minimum resale prices.

Fixing minimum resale prices for copyrighted books which, according to the complaints, are not exempted by the Miller-Tydings amendment because they are not in "free and open competition with other commodities of the same general class."

In the Doubleday case, the complaint challenged the fixing of minimum prices for books resold by retail book sellers in competition with Doubleday's wholly-owned retail book stores.

Each of the respondents was also charged with discriminating in price between jobber customers in violation of section 2 (a) of the Clayton Act.

International Cellucotton Products Co., Chicago, was charged with monopolistic practices in the sale of Kotex sanitary napkins and Kleenex facial tissues. According to the complaint, International's contracts with drug and dry goods wholesalers had the purpose and effect of preventing the wholesalers from "promoting" the sale of competing products.

Five complaints were issued charging monopolistic use of tying and exclusive-clearing contracts and arrangements in violation of section 3 of the Clayton Act. The complaints alleged that as a result of such arrangements, dealers in a variety of products were prevented from exercising their free and independent judgment in selecting sources of supply, with the effect—actual or potential—of substantially lessening competition or tending toward monopoly.

The respondents and their products were Insto-Gas Corp., Detroit, propane gas and related equipment; Outboard, Marine and Manufacturing Co., Waukegan, Ill., outboard motors; Underwood Corp., New York, billing machines and carbon paper rolls; The Maico Co., Inc., Minneapolis, and Beltone Hearing Aid Co., Chicago, hearing aids.

In addition to the book publishers' cases (page 40), two other complaints charged price discriminations which may injure or destroy competition or which may tend to create a monopoly, in violation of section 2 (a) of the Clayton Act. One complaint cited Cat's Paw Rubber Co., Baltimore, and others for discriminating in the price of rubber heels, soles, and other shoe repair products. The other alleged that Thompson Products, Inc., Cleveland, discriminates against small businessmen in the prices it charges then for automotive products and supplies.

The Commission also issued amended and supplemental complaints charging three of the largest soap manufacturing corporations in the United States with unlawful discrimination in the sale of their prod-

ucts. The companies are Lever Brothers Co., New York; The Procter & Gamble Co., Cincinnati; and Colgate-Palmolive-Peet Co., Jersey City, N. J.

In addition to restating the charges contained in complaints issued previously, the amended and supplemental complaints broadened the issues which the Commission will consider when it determines whether orders to cease and desist shall be entered. Each corporation was alleged to discriminate in price by charging certain customers—"usually small businessmen"—higher prices than are charged "competing customers who are generally larger customers," for soap products of like grade and quality. Each respondent was also alleged to have paid or contracted to pay certain customers for advertising services and facilities without making such payments available to all other competing customers on proportionally equal terms, in violation of section 2 (d) of the Clayton Act.

Four new complaints were also issued under Section 2 (d) of the Clayton Act, challenging the failure of three watch manufacturers and a cigar manufacturer to make promotional allowances available to all competing customers on proportionally equal terms. The three watch companies are Bulova Watch Co., New York; The Gruen Watch Co., Cincinnati; and Elgin National Watch Co., Elgin, Ill. Each was charged with discrimination in the granting of advertising allowances. In the fourth complaint, consolidated Cigar Corp., New York, was alleged to have paid display allowances to seven large retail chains without making such allowances available in any amount to thousands of its other customers.

Violation of section 2 (c) of the Clayton Act was alleged in four complaints. In all four cases, buyers of food products were alleged to have accepted brokerage on purchases made for their own accounts or on purchases made by an agent or other intermediary subject to their control. Two of the cases (Hesmer, Inc., and Pacific Gamble Robinson Co.) resulted in cease-and-desist orders (see page 39). The pending cases involve Consolidated Companies, Inc., New Orleans, and Dekle Brokerage Co., Mobile, Ala.

Compliance Activities

The fiscal year saw the conclusion of protracted litigation to compel Salt Producers Association and its members to file special reports as to their compliance with a Commission order directing termination of an admitted price-fixing conspiracy. The order requiring the reports was resisted by the salt companies as beyond the Commission's authority. The Attorney General, with the cooperation and assistance of the Commission, brought actions in the United States District Court at Chicago seeking mandatory injunctions compelling the

filing of the reports by Morton Salt Co., Chicago, and International Salt Co., Scranton, Pa., together with penalties for their refusal to file. After extended litigation in the District Court, the Court of Appeals for the Seventh Circuit, and the Supreme Court of the United States, the Government was successful in securing judgments compelling the filing of the reports, and a total of \$80,000 in penalties from the two defendants.

The cases are particularly important because they establish beyond question the Commission's right to compel the filing of special reports by corporations engaged in commerce, not only as to compliance with orders to cease and desist but also as a means of ascertaining violations of the laws it administers. It had been contended by many lawyers that the powers of investigation contained in subsections (a) and (b) of section 6 of the Federal Trade Commission Act were limited to economic surveys and investigations requested by Congress or the President; and that these powers could not be employed in connection with the Commission's functions of preventing unfair methods of competition under the Federal Trade Commission Act or practices in violation of the Clayton Act. The decision removed any doubt that may have existed on this score, and clearly authorized a useful method of investigation of corporate practices which should make the Commission's work more effective in the future.

In addition to the Salt cases, considerable time was spent in investigation of compliance with cases involving restraints of trade and price discrimination. In *Federal Trade Commission v. Standard Brands, Inc.*, 189 F. 2d 510 (C. A. 2, 1951), the Commission was successful in securing partial enforcement of an earlier order designed to terminate discriminations in the sale of bakers' yeast. This proceeding involved a protracted informal investigation by the Commission's staff, and formal hearings over a period of several months before a hearing officer at which evidence was presented, both by Commission counsel and counsel for Standard Brands, on the question of whether the order had been violated.

The Standard Brands case is one illustration of the unnecessary expense of investigation and litigation which the Commission is now required to undertake in seeking to enforce orders under the Clayton Act where the respondent has not sought court review. This added expense could be eliminated by an amendment to the Clayton Act along the lines of the 1938 amendments to the Federal Trade Commission Act. The Commission is renewing in this report its urgent recommendation that such legislation be enacted (see page 7).

Investigations of Monopolistic Practices

Complaints received from outside sources	700
Scheduled investigations completed	309

Prerequisite to the complaints, cease-and-desist orders, and compliance cases described in the preceding pages are investigations to determine the facts. Such inquiries are made by attorney-examiners on the staff of the Bureau of Antimonopoly. Many of these investigations are instituted on the basis of complaints received from outside sources.

One of the principal duties of the Director of the Bureau is to study each application for complaint for the purpose of determining whether investigation is warranted. Where sufficient basis for field investigation is present, the matter is docketed for investigation. It is then referred to the Bureau's Division of Investigation and Litigation for transmittal to the appropriate branch office and subsequent assignment to an attorney-examiner. Cases thus investigated progress under the direction of the Commission to the status of either a formal complaint or closing without further action.

Most of the requests for Commission investigation in cases involving restraint of trade or monopolistic tendencies come from individuals or firms who fear that the successful operation of their businesses may be threatened by the illegal practices of others. Complaints are also received from Members of Congress and from Government agencies. Applications for complaints, especially in the area of price-fixing, are frequently received from Government officials—National, State, and local—who have been unable to obtain competitive bids as required by the laws under which their purchases are made. The Commission also docketed for investigation a substantial number of complaints on its own motion.

During the fiscal year, 700 such applications for complaint were received. If the application contained what appeared to be a possible basis of investigation but not sufficient information to warrant immediate docketing, the necessary additional facts and information were developed through correspondence, and, in some instances, by personal interview with the applicant. On the basis of the information thus obtained, only matters that indicated a probable violation of the laws administered by the Commission were docketed for field investigation.

Investigations involving charges of restraint of trade usually arise in connection with the administration of section 5 of the Federal Trade Commission Act and sections 2, 3, and 7 of the Clayton Act.

Investigations under section 5 of the Federal Trade Commission Act related to such "unfair" practices as price-fixing agreements, collusive bidding, conspiracy to control production and limit supplies, interference with source of supply, boycott, and refusal to sell and selling below cost with the intent and effect of injuring competition. Some of the more important products involved were automotive parts

and supplies, electric motors, bookbinding supplies, tobacco, food products, ice, advertising specialties, greeting cards, television sets, propane gas, and cordage.

Clayton Act investigations covered price discrimination, unlawful payment or receipt of brokerage, discrimination in the payment of allowances for advertising and promotional services and in the rendering of services, and the unlawful inducement and receipt of discriminatory prices. Among the products involved were automotive parts and accessories, paint, dairy products, soap, food products, clothing, tobacco, flour, sugar, watches, greeting cards, petroleum products, and canned fruits and vegetables.

Under section 3 of the Clayton Act, investigations dealt with exclusive-dealing and tie-in contracts relating to such products as cigars, outboard motors, petroleum products, hearing aids, and paper containers.

Section 7 of the Clayton Act, as amended December 29, 1950, prohibits the acquisition by one corporation of the stock or assets of another corporation where the effect may be to substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country. Prior to the 1950 amendment, the law merely prohibited stock acquisitions which had certain competitive effects. It did not prevent a corporation from acquiring the assets of a competitor. Primarily as a result of the strengthening of the act, the number of investigations under section 7 increased greatly during the last half of the fiscal year. Among the commodities covered by such investigations were steel products, rugs and carpets, valves, stoves and ranges, flour, paper products, coated abrasives, and pumps.

In both the investigation and trial of antimonopoly cases, assistance is given by members of the economic and accounting staffs of the Bureau of Industrial Economics. Such services include notification concerning proposed or consummated acquisitions, mergers, and consolidations; economic evaluation of data relating to such acquisitions; and the preparation of cost and price studies for use in cases arising under both the Clayton Act and the Federal Trade Commission Act.

ANTIMONOPOLY CASES IN FEDERAL COURTS

Petition for review dismissed	1
Commission orders affirmed and enforcement granted	2
Reversed by Supreme Court	1
Suits to compel filing of special compliance reports	2
Petitions for review pending June 30, 1951	9

(In the text which follows, United States Courts of Appeals are designated as "First Circuit (Boston)," etc.)

Cases Decided

During the fiscal year six cases involving antimonopoly proceedings by the Commission were decided in United States courts. Nine such cases were pending in the courts at the end of the fiscal year.

Decisions favorable to the Commission were obtained in three cases in courts of appeals, including one dismissal of a petition to review.

The Eighth Circuit (St. Louis) dismissed, for failure to prosecute, the petition of Reid H. Ray Film Industries, Inc., St. Paul, Minn., for review of the Commission's order against an unfair method of competition in the distribution of motion picture advertising film.

The other two cases in which decisions favorable to the Commission were handed down were: Standard Brands, Inc., New York, in which the Second Circuit (New York) affirmed and ordered enforced (except as to clause 2) the Commission's order against price discrimination in the sale of yeast in violation of section 2 (a) of the Clayton Act.

The Rubberoid Co., New York, in which the Second Circuit (New York) affirmed and ordered enforced the Commission's order against price discriminations in the sale of roofing materials in violation of section 2 (a) of the Clayton Act.¹

In the cases against Morton Salt Co., Chicago, and International Salt Co., Scranton, Pa., the District Court for the Northern District of Illinois (Chicago) gave judgments for the United States requiring the filing of special compliance reports and for aggregate penalties of \$80,000 for failure to file such reports.

The lone decision adverse to the Commission was in the case of Standard Oil Company of Indiana, Chicago. In this proceeding, the Supreme Court reversed the decision of the Seventh Circuit (Chicago) modifying and affirming as modified the Commission's order against price discrimination in the sale of gasoline in violation of section 2 (a) of the Clayton Act, and remanded the case to that Court. Subsequently the Seventh Circuit remanded the case to the Federal Trade Commission to make findings in conformity with the opinion of the Supreme Court.

Pending Cases

Cases pending in the courts at the close of the fiscal year included:

Alexander Film Co., Colorado Springs, Colo., Tenth Circuit (Denver). Exclusive-screening contracts in the distribution of motion picture advertising films in violation of the Federal Trade Commission Act.

Automatic Canteen Company of America, Chicago. Seventh Circuit (Chicago). Price discrimination and exclusive-dealing contracts

¹ See footnote 3, p. 47.

in the purchase and sale of candy in violation of sections 2 (f) and 3 of the Clayton Act.

Douglas Fir Plywood Association and others, Tacoma, Wash. Ninth Circuit (San Francisco). Conspiracy to fix prices of plywood products.

Fir Door Institute and others, Tacoma, Wash. Ninth Circuit (San Francisco). Conspiracy to fix prices of Douglas fir doors.

Minneapolis-Honeywell Regulator Co., Minneapolis. Seventh Circuit (Chicago). Sales practices tending to restrain trade and to create a monopoly in the sale of automatic temperature controls in violation of the Federal Trade Commission Act and sections 2 (a) and 3 of the Clayton Act.²

Motion Picture Advertising Co., New Orleans. Fifth Circuit (New Orleans). Exclusive-screening contracts in the distribution of motion picture advertising films in violation of the Federal Trade Commission Act.

The Rubberoid Co., New York. Second Circuit (New York). Petition for rehearing on decision affirming and granting enforcement of the Commission's order against price discriminations in sale of roofing materials in violation of section 2 (a) of the Clayton Act.³

United Film Co., Kansas City, Mo. Eighth Circuit (St. Louis). Exclusive-screening contracts in the distribution of motion picture advertising film in violation of the Federal Trade Commission Act.

Whitney & Co., Seattle. Ninth Circuit (San Francisco). Petition for enforcement of order against violation of section 2 (c) of the Clayton Act in connection with the sale of food products.⁴

SUPERVISION OF EXPORT ASSOCIATIONS

The Export Trade Act (Webb-Pomerene law) is a cooperative act passed in 1918 for the purpose of promoting the export trade of this country. It grants conditional exemption from the antitrust laws to export associations. Among other things, they are required to file with the Commission copies of their organization papers, annual reports, and other information concerning their operation.

The law provides that such an association must be engaged solely in export trade and must not restrain the trade of domestic competitors, artificially or intentionally enhance or depress prices within the United States, substantially lessen competition, or otherwise restrain trade in this country.

The act is administered by the Commission through the Division of Export Trade in the Bureau of Antimonopoly. The Division assists

² Order under section 2 of Clayton Act reversed July 5, 1951.

³ Order of enforcement vacated Aug. 14, 1951.

⁴ Order affirmed Nov. 1, 1951.

in organizing the groups and supervises their operation through periodic calls at the association offices and through examination of the required reports.

The Commission is authorized to conduct inquiries to determine compliance with the statute. Where violations are found, it is empowered to issue recommendations for the readjustment of the business of the association to bring its operations into conformity with the law.

Exports of metal products and raw materials by the associations showed a slight increase in the calendar year 1950, but exports of lumber and foodstuffs declined. The decreases were blamed in part on continued dollar shortages, growing competition of cheaper goods abroad, and blocked accounts which made it difficult to get money out of foreign countries. In addition, some materials in short supply were under export restrictions and license control to meet defense needs of this country.

Exports by the associations in 1949 and 1950 were valued as follows:

	1949	1950
Metals and metal products -----	\$45,243,575	\$50,778,293
Products of mines and wells -----	43,279,155	43,863,159
Lumber and wood products -----	9,702,272	7,892,288
Foodstuffs -----	106,660,000	82,467,160
Miscellaneous -----	418,176,331	305,427,247
 Total -----	 <u>\$623,061,333</u>	 <u>\$490,428,147</u>

At the close of the fiscal year, 46 export associations were registered with the Commission under the Export Trade Act.

Three new associations were organized during the year—two in the machine tool industry. Machine Affiliates, Inc., and Machine Affiliates Trading Corp. were formed for the purpose of exporting machine tools and financing export sales by machine tool manufacturers. Machine Affiliates, Inc., selling tools to Latin-American countries, is an association of 19 manufacturers, with headquarters in New York. The Trading Corporation represents 15 manufacturers, some of which are connected with the first group. Its headquarters are in Cincinnati.

The third new association formed in 1950 was Pacific Dried Fruit Export Association, representing eight packing companies and one growers' association in California. Its headquarters are in San Francisco.

FUNDS EXPENDED

The Bureau of Antimonopoly expended \$845,406 during the fiscal year. Of this amount, investigations accounted for \$523,732; litigation, \$277,472; and export trade work, \$44,202.

5

Antideceptive Practices Work

PROTECTION OF THE CONSUMER from deception and the businessman from unfair methods of competition is one of the primary functions of the Federal Trade Commission. The work of investigating and trying cases of this character (other than those involving monopolistic practices) is centered in the Bureau of Antideceptive Practices. The Commission's antideceptive program seeks to prevent the dissemination of false and misleading advertisements, the misbranding of a variety of products, and other forms of misrepresentation.

The basic statutory authority for the antideceptive program is contained in section G of the Federal Trade Commission Act. This section makes unlawful the use in commerce of "unfair methods of competition" and "unfair or deceptive acts or practices," and directs the Commission to "prevent" such practices. Other sections of the statute deal specifically with false advertising of food, drugs, therapeutic devices, and cosmetics.

In addition, the Wool Products Labeling Act requires truthful disclosure of the fiber content of wool products which are manufactured for or marketed in commerce.

Under these statutes, the Commission institutes proceedings aimed at stopping practices which are "unfair" because characterized by deception, bad faith, or fraud. In cases in which a formal complaint is issued, and where the facts justify it, the method used is an order to "cease and desist" from specified practices. Other means of obtaining compliance with the law are also used. Some cases are settled without litigation when the offender voluntarily signs a stipulation-agreement to discontinue challenged practices. Others are disposed of informally by obtaining correction administratively. The test is the statutory requirement that the "public interest" be served by a formal complaint-and-order proceeding.

LEGAL CASE WORK

Orders to cease and desist	98
Complaints issued	80
Cases settled by stipulation	9
Dismissed or closed	25
Cases investigated	869

Orders Against Deceptive Practices

Orders issued during the year were directed against a wide variety of unfair and deceptive practices and involved a wide range of commodities.

Leading the list of cases in which false claims for medicinal preparations were prohibited was the proceeding involving Carter's Little Liver Pills.* The order prohibited representations that the product has any therapeutic value other than the temporary relief afforded by an irritant laxative compound. It required deletion of the word "liver" from the trade-name because it falsely represents the product has some therapeutic value in the treatment of disorders and diseases of the liver. Another order outlawed claims that New Pe-Ru-Na Tonic is of therapeutic value in the treatment of colds.*

A West Coast firm was required to stop a long list of false claims for a score of food and drug products, therapeutic devices, and cosmetics. The Commission found, for example, that products known as Nezets and Vervets have no therapeutic value in the treatment of 80 ailments for which they were recommended in advertising.

Orders in two other cases halted claims that preparations designated Terits and Sulgly-Minol are cures or remedies for arthritis. In connection with a pending case involving similar claims, the Commission sought a court injunction to restrain allegedly false advertising of the nationally distributed product Imdrin (page 62).

Sterling Drug, Inc., was ordered to refrain from deceptive advertising in connection with the sale of Bayer Aspirin, Phillips' Milk of Magnesia Cleansing Cream, and Phillips' Milk of Magnesia Skin Cream. The Commission found, among other things, that Sterling formerly represented falsely that the "druggists of America" were the sponsors of a radio program promoting the sale of Bayer Aspirin. The order also restricted claims as to the results stemming from the use of the Phillips' cosmetic preparations.

Cases in which the advertisements of five well-known pain-relieving preparations had been challenged as deceptive were closed on the basis of stipulation-agreements. According to the agreements, advertisements for Hick's Liquid Capudine, Bromo-Seltzer, Dr. Miles Nervine, Dr. Miles Nervine Tablets, and Dr. Miles Anti-Pain Pills must reveal that users should "follow the label" and "avoid excessive use." Five cases involving antihistamine preparations were also formally disposed of by stipulation-agreements. Complaints issued in 1950, challenging as false the advertising representations made for Resistab, Anahist, Kriptin, Inhiston, and Antamine, were dismissed when their sellers agreed to discontinue "unjustified claims" concerning their effectiveness in the treatment of colds.

*Cases marked with an asterisk were pending for review in court at the close of the year. See page 62 for court cases.

Therapeutic devices were also among the products for which advertising was ordered modified to prevent deception and, in two instances, possible danger to purchasers. A New York concern was directed to stop advertising that the Bell Diathermy apparatus, when used by the unskilled lay public in the treatment of self-diagnosed conditions, is a competent treatment or cure for arthritis, asthma, neuritis, lumbago, sciatica, bursitis, neuralgia, or similar disorders. The order further required that advertisements conspicuously reveal the potential dangers involved in its unsupervised use by laymen. Sellers of devices called Dila-Therm and Heatade were ordered to stop advertising the products as having therapeutic value in treating diseases of the prostate gland. The seller of the Atmoray Ozone Generator was required to stop misrepresenting the effectiveness, usefulness, and safety of the device.

In the food field, the makers of Nu-Maid Margarine were ordered to stop claiming that their product, because of its Vitamin A content, provides the user with increased pep, energy, vitality, vigor, strength, or endurance, or that it has any therapeutic value in the treatment of digestive troubles. The order further prohibited representations that Nu-Maid is the only margarine suitable for table use. Seasonings and spices were involved in a proceeding in which the order prohibited claims that B. F. M. Soluble Seasonings are sterile or entirely free from bacteria and cause less gastric distress than ground natural spices. False disparagement of competing products was also forbidden by the order. Under the terms of an order served on three California corporations, Acme Beer may not be advertised unqualifiedly as "Dietetically Non-Fattening," or otherwise represented deceptively as a product which will not increase the weight of the consumer.

Two preparations for the hair were involved in proceedings resulting in cease-and-desist orders. A Chicago company was ordered to stop advertising that Shadz Color Shampoo will color hair, and a Hollywood corporation was directed to discontinue claims that Herbold Pomade will color the roots of the hair and prevent the hair from becoming gray; that it will impart the former natural shade or color to gray, streaked, or faded hair; or that it is safe or harmless. The Commission found that Nadinola Bleaching Cream and Nadinola Freckle Cream are not adequate or competent treatments for pimples or skin blemishes, and accordingly ordered a halt to such claims. Misrepresentation of the olive oil content of soap was prohibited in an order against a New York distributor and a Philadelphia drug chain.

Deceptive use of the Red Cross name and symbol was discontinued as a result of two proceedings. An Atlanta manufacturer was ordered to stop using the Red Cross name and symbol without a disclaimer

revealing that its bed springs and mattresses have no connection with the American National Red Cross. A similar restriction was agreed to by the manufacturer of Red Cross cough drops, and the complaint was then dismissed.

Continuing its drive against deceptive cigarette advertising, the Commission issued a sweeping order against the maker of Lucky Strikes.* The order prohibited claims that Luckies—or the smoke from them—contain less nicotine or less acid than other leading brands; that they are easy on the throat; or that they provide protection against throat irritation or coughing. The Commission's findings in this case paralleled those made earlier in cases involving Old Gold and Camel cigarettes. The Commission said there is "no significant difference" in the amount of nicotine, acid, and throat irritants contained in the leading brands of cigarettes.

Deception in the sale of imported imitation pearls was the target of Commission proceedings in eight cases in which the orders required the disclosure of the foreign origin of such products.* In three of the cases, the orders also banned the unqualified use of the word "pearls" to refer to imitation pearls.

An advertising solicitation plan which misled businessmen was ordered halted in a case involving business directories. The Commission found that in soliciting advertisements for its directories, Independent Directory Corp. submitted advertisements clipped from other publications, particularly local telephone directories. Despite disclaimers in the contract forms to which the clipped ads were attached, the record showed many businessmen signed the contracts in the mistaken belief they were simply authorizing renewal of their ads in publications where they had formerly appeared. The only effective means of preventing such deception, the Commission ruled, was to prohibit Independent from using, in mail solicitation, advertisements clipped from publications other than its own.

A Brooklyn partnership was required to stop misrepresenting the linseed oil content of putty. Two sellers of miscellaneous merchandise were forbidden to misrepresent the prices of their goods or to engage in various other deceptive practices. Misrepresentation of merchandise as "Government Issue" and "U. S. Regulation" was halted in another case. Restrictions were also imposed on the use of the terms "Army" and "Navy" to refer to merchandise.

Deceptive use of the word "free" was prohibited in an order against a New York firm selling women's wearing apparel. The term "free" may not be used to describe merchandise, according to the order, unless it is actually a gift with no strings attached.* An oil com-

*Cases marked with an asterisk were pending for review in court at the close of the year. See page 62 for court cases.

pany was directed to stop using such trade-names as "Cert-O-Penn" and "Pennolene" for oil not originating in the Pennsylvania Oil Field. Misrepresentation of Plasta-Kote paints and varnishes was prohibited in another order.

Baby chicks were involved in two proceedings. The orders prohibited misrepresentation as to price, guaranties, "free" goods, and participation in the United States Poultry Improvement Plan. A maker of church candles was required to stop advertising falsely that they were composed entirely of beeswax. Misrepresentation of the composition of phonograph needles and the number of times they may be played was prohibited in an order against the manufacturers of "Walco" needles.

Two corporations—one selling cutlery, the other, handkerchiefs—were ordered to stop claiming to be manufacturers. Misbranding of pen points was halted by an order against C. Howard Hunt Pen Co.* The Commission found, for example, that some pen points stamped "14 Kt. Gold Plated" actually were coated with a gold alloy less than two millionths of an inch in thickness.

Advertisements purporting to offer employment when the real purpose was to obtain purchasers for nut vending machines were the subject of a cease-and-desist order. Two other proceedings put an end to false claims for automotive devices. The Kingpin Air Valve may not be advertised as resulting in quicker starting or as adding power to gasoline engines, and the E. G. Supercharger and E. G. Super-Ignitioniter may not be represented as affording increased mileage, power, acceleration, pick-up, or "atomic starting."

Cases in the radio field ranged from false claims concerning the reception range of crystal sets to misrepresentation in the sale of coin-operated radios. Deceptive marking of radio tubes was involved in another proceeding.

Misrepresentation of the availability of steel pipe and tubing was forbidden in an order against a St. Louis firm. A Detroit wholesaler of novelty merchandise was ordered to stop using a sales scheme in which he sought to coerce retailers into paying for goods they had not ordered. Passing off of second-hand hats as new was prohibited in a case involving a Brooklyn firm.

Deceptive practices in the door-to-door sale of aluminumware, dinnerware, silver plate, and glassware was forbidden in an order against Consumers Sales Corp. The Commission found that salesmen falsely claimed they were making "surveys" and that "special low prices" were ordered in return for box tops.

Eight orders, were directed against deceptive nondisclosure of the

*Cases marked with an asterisk were pending for review in court at the close of the year. See page 62 for court cases.

rayon content of such products as dresses, girdles, and lamp shades.* The girdle case also involved misuse of the term "full-fashioned." Misrepresentation in advertising of the fiber content of blankets and wearing apparel was banned in another order.

Numerous deceptive practices in the sale of encyclopedias and other books were outlawed in four proceedings. Use of the "survey" technique as an entering wedge for salesmen was one of the condemned practices. False claims of "special," "introductory" and "reduced" prices were banned, as were deceptive representations that certain products or services were offered "free." Similar practices were found and forbidden in two cases involving the sale of photographs.

Misrepresentation in the sale of correspondence courses was the subject of two orders. In one case, courses in Diesel training and fingerprint science were falsely advertised as assuring employment and were otherwise misrepresented. In the other, a concern selling courses intended to prepare students for United States civil service examinations was required to stop claiming any connection with the U. S. Government.

Discontinuance of false advertising of rodenticides was directed in two cases. One preparation, Rodan, must not be advertised as an effective killing agent for mice or rats other than brown rats. Neither may it be represented as harmless to domestic animals and poultry. Advertising for CCC Liquid Mouse and Rat Destroyer must not claim that the product is an effective killing agent for mice, that it will kill all rats on infested premises, or that rats eating it go outdoors to die.

In 14 cases the Commission issued orders against misbranding of a variety of wool products. The orders required that wool products bear labels showing the fiber content, the identity of the manufacturer or other interstate marketer, and other information specified by the Wool Products Labeling Act and the rules and regulations promulgated thereunder.

Eight orders were directed against the interstate sale of punchboards, pushcards, or other lottery devices which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme. In two cases, firms engaged in locating delinquent debtors were ordered to stop masquerading the nature of their business by using such names as Rapid X Forwarding System, Novelty Distributors Co., Recording Service, and Industrial Bureau.

Complaints Charging Deceptive Practices

Misbranding of wool products accounted for the largest number of complaints in a single category. Twenty-two complaints were

*Cases marked with an asterisk were pending for review in court at the close of the year. See page 62 for court cases.

issued charging misbranding in violation of the Wool Products Labeling Act and the Federal Trade Commission Act. The offenses charged included false and misleading labeling as to fiber content and failure to affix labels or tags containing the information required by the law and regulations.

Misrepresentation of the therapeutic properties and effectiveness of medicinal preparations was charged in three complaints. The products included Romind, advertised for the treatment of arthritis and related ailments, and Chinaroid, for hemorrhoids; "Liepe Method" products, for eczema and varicose ulcers; and Celparux, for diabetes. Three complaints challenging claims for various devices were also issued. They involved a heating device advertised for prostate gland troubles; "orthopedic" bed springs and mattresses; and the Dobbs Truss. Therapeutic claims for shoes and for a shoe insert were challenged in three other complaints.

Automotive products were alleged to be misrepresented in four complaints. One charged a group of corporations and individuals with selling "counterfeit" automotive ignition points and parts which were passed off as "genuine" Auto-Lite, Delco-Remy, and Ford parts. The usefulness of a product known as Sav-A-Battery was alleged to be misrepresented. It was advertised as a battery conditioner, but the complaint said it has no beneficial effect in the preservation, operation, or maintenance of lead acid storage batteries. The third complaint in this field challenged as false the claims made for Frigid-O, a so-called antifreeze. It said that instead of protecting engines, the product will cause serious damage. Penolube Motor Oil was alleged to be falsely represented as originating in the Pennsylvania Oil Field.

Misrepresentation in the sale of correspondence courses intended to prepare students for United States civil service examinations was alleged in three complaints. In all three cases, allegedly false claims were made that the businesses were connected with the U. S. Government.

Four complaints charged deceptive labeling of pillows. The offenses alleged included misrepresentation of the feather and down content of the pillows and false claims that second-hand ingredients were new.

Failure to make clear disclosure of the foreign origin of products was charged in 18 cases. By such failure and, in some cases, by affirmative misrepresentations, the complaints charged purchasers were misled into the belief the products were of domestic origin. Fourteen of the cases involved sewing machines; two, mechanical pencils; and two, watch bands. In another watch band case, the complaint charged misrepresentation of the gold content.

Misbranding of paint brushes containing horse hair as "pure bristle" was charged in complaints against two New York firms. Two

other complaints charged misrepresentation of the quality and price of furs and fur garments by New York and Washington firms. United States Navy Magazine was charged with misrepresenting itself as an official publication of the U. S. Navy Department, and the sellers of Signet and Mentor books were charged with misrepresenting abridged editions as "complete and unabridged."

Use of unfair and deceptive practices to obtain information about delinquent debtors was charged in four complaints. Collection agencies used misleading trade names and other devices to obtain information by subterfuge, according to the complaints.

Miscellaneous complaints charged misrepresentation in the sale of photographs; false advertising of Sanapak sanitary napkins, Drylem beverage flavoring powder, and patches and remnants; and sale of lottery devices.

Letters and Affidavits of Discontinuance

It is within the discretion of the Commission, according to numerous court decisions, to determine whether an order to cease and desist should be issued in cases where unlawful practices have been discontinued.

In order to conserve its investigational facilities for use against more important and persistent violations, the Division of Investigation, Bureau of Antideceptive Practices, may discontinue its inquiry in certain cases where satisfactory assurance is received that the objectionable practice has been discontinued without intent to resume. In addition, scheduled investigations involving the same types of cases may be reported to the Commission with recommendations for closing if similar assurances are received and the public interest is thereby served.

During the fiscal year, 281 cases, including 79 scheduled investigations and 202 preliminary inquiries, were thus settled administratively by acceptance of letters or affidavits of discontinuance.

Compliance Activities

Compliance work in the antideceptive practice field saw an increased emphasis upon follow-up investigation to make sure that orders to cease and desist currently entered by the Commission have been effective in stopping the unfair practices involved and in seeing to it that parties respondent are under no misapprehensions about the requirements and obligations of such orders. This involved work in securing factual information sufficient to permit appraisal of the revisions in business practices undertaken to comply and in conferences with respondents and their counsel.

Considerable additional work was done on a number of civil penalty cases which were pending from the previous fiscal year. In addition,

a new civil penalty proceeding was initiated in the case of Thomas Management Corp., Chicago, and others (Docket 4422). The Attorney General, at the Commission's request, brought suit in the District Court at Chicago, seeking penalties in the amount of \$290,000. The suit charged repeated violations of a Commission order requiring abandonment of claims for curing scalp ailments and growing hair.

Besides the Thomas proceeding, other civil penalty cases pending in United States district courts included:

U. S. v. Lady Carole Coats, Inc., and others; U. S. v. Shelbrooke Coats, and others. Suits for penalties for failure to keep records under the Wool Products Labeling Act. District Court (New York City).

U. S. v. Korjena Medicine Co., and others; U. S. v. Oland D. Redd. Suits for civil penalties for violation of a Commission order to cease and desist. District Court (Buffalo).

U. S. v. Standard Education Society, and others. Suit for civil penalties for violation of a Commission order. District Court (Chicago).

U. S. v. Gerald A. Rice, and others. Suit for civil penalties for violation of a Commission order. District Court (Seattle).

Investigations of Deceptive Practices

Scheduled investigations completed ----- 869
 Complaints received from outside sources ----- 2,524
 Preliminary inquiries disposed of ----- 2,324

SURVEY OF ADVERTISING

Source of Advertising	Number of Advertisements	
	Examined	Set aside as questionable
Mail-Order Catalogs -----	14,046 (pages)	94
Periodicals -----	323,120	17,232
Radio -----	*344,522	9,869
Television -----	31,174	1,323
Total -----	712,862	28,518

*Aggregating 1,034,914 typewritten pages.

The legal case work described in the foregoing pages requires, of course, investigations to determine the facts. This function is the responsibility of the Division of Investigation. It investigates alleged violations and obtains the information necessary to support issuance of formal complaints, negotiation of stipulations, and other corrective action by the Commission.

The Federal Trade Commission Act requires that before issuance of a formal complaint the Commission must "have reason to believe"

that the Act has been violated and that a proceeding by it would be "to the interest of the public." The primary function of the Division of Investigation, therefore, is to obtain necessary information for the Commission to determine whether there is reason to believe that the Act has been violated and whether there is sufficient public interest to warrant issuance of a complaint. The investigations conducted by the Division are sufficiently broad in scope to accomplish this purpose, as well as to permit disposition of some matters by less formal means.

The Division also conducts deceptive practice investigations for other Commission units, including some for the Division of Wool and Fur labeling, some for the Assistant General Counsel in Charge of Trade Marks and Insurance, and others for the Assistant General Counsel in Charge of Compliance.

In addition to individual-case procedure, the Division conducts industry-wide investigations as circumstances require when it appears that questionable practices are widespread in an industry.

In order that violations may be promptly brought to the attention of the Commission, the Division maintains a continuing survey of published, broadcast, and telecast advertising for the purpose of detecting false and deceptive claims. It also screens letters of complaint which are received from such sources as businessmen, consumers, and other Government agencies.

Possible violations are first subjected to preliminary inquiry, usually by correspondence, to determine initially whether a proceeding is called for. This procedure serves to weed out those matters which, because of lack of jurisdiction, lack of public interest, or for other reasons, are not proper subjects for Commission action. It serves also to obtain in many instances, prompt, voluntary cessation of unlawful practices.

If a matter cannot be satisfactorily disposed of in the preliminary inquiry stage and it appears to involve a probable violation and substantial public interest, it is scheduled for more extended investigation, either in the field or by correspondence, or both. For field investigation the case is transmitted to one of the Commission's six field offices. There it is assigned to an attorney-examiner for development of all necessary information. The proposed respondent is usually advised of the nature of the charges against him, and is afforded full opportunity to submit information in explanation or justification of his practices. Upon completion of the investigation, a report to the Commission is prepared, summarizing the evidence and the applicable law, together with a recommendation for disposition, which may be for (1) issuance of a formal complaint; (2) negotiation of a stipulation-agreement in which the respondent agrees to

cease and desist from the practices challenged as unlawful; or (3) closing where in certain types of cases the illegal practices were discontinued without intent to resume, or where the charges were not sustained, the Commission was without jurisdiction, or there was insufficient public interest to warrant a proceeding.

In its advertising survey, the Division examines advertisements appearing in current issues of magazines, newspapers, farm and trade journals, mail-order catalogs, and radio and television commercial continuities. The survey brings to light advertisements which form the basis for scheduling deceptive practice investigations; provides an inexpensive method of checking on the activities of advertisers covered by outstanding cease-and-desist orders and stipulations; furnishes evidence which facilitates investigations and trials in advertising cases; supplies information for determining the need for, and the extent of compliance with, trade practice rules; and provides a readily available cross-section of advertisements with respect to particular products and industries for use in conducting industry-wide investigations. Advertisements observed in the survey are also utilized by the Alcohol Tax Unit of the Treasury Department in its enforcement of the advertising provisions of the Federal Alcohol Administration Act. In addition to these direct and measurable effects, the survey is known to exert a salutary effect upon advertising generally.

In connection with the survey, some newspapers and magazines are examined on a continuing basis because of the high percentage of questionable advertisements published in them. Copies of most of the 20,000 publications circulated in this country, however, are procured three times yearly.

Mail order catalogs and circulars are received from 50 mail order houses, 5 of which have combined annual sales of nearly \$4 billion.

The frequency of calls for commercial continuities from the 2,900 radio and television stations covered by the survey is in proportion to the population of the cities in which the stations are located. Radio stations in small cities submit samples of commercial script once yearly; stations in cities of intermediate size, twice yearly; and stations in large cities, 3 times yearly. The national and regional radio networks respond on a continuous weekly basis and producers of electrical transcriptions submit texts of commercial recordings once each month. Television networks, individual television stations, and producers of television advertising films and records also submit samples of their commercial script periodically. Material for the survey is furnished on a voluntary basis.

Advertisements examined in the survey during the fiscal year 1951 totaled 712,862, of which 28,518 were set aside as questionable.

During the year, 14,715 such advertisements were supplied to operating divisions of the Commission for use in connection with the investigation and trial of cases, the preparation of scientific opinions, the administration of trade practice rules, or the enforcement of outstanding orders and stipulations to cease and desist; and 269 advertisements were transmitted to the Alcohol Tax Unit at its request. Advertising of alcoholic beverages, cigarettes, and oleomargarine was given special attention.

Complaints from outside sources alleging false advertising or other deceptive practices numbered 2,524. Of 2,324 such matters disposed of, 376 were scheduled for investigation; 32, reported directly to the Commission; 211, referred to other divisions of the Commission; 554, added to other Commission files; 60, referred to other Government agencies; and 202, disposed of administratively. The remainder were filed without action. Those cases disposed of administratively were matters in which correction of objectionable practices was brought about by voluntary action on the part of the proposed respondent. The matters scheduled for investigation were those which could not be satisfactorily disposed of in the preliminary stage, and which appeared to involve illegal practices and substantial public interest.

Scheduled investigations completed during the year totaled 869. Of these, 546 involved false advertising and misrepresentation generally, including 12 insurance cases; 318, false advertising of food, drugs, cosmetics, and devices; 3, trade-mark matters under the Lanham Trade-Mark Act; and 2, misbranding under the Wool Products Labeling Act. Included in the total were 27 investigations for the purpose of determining compliance with Commission orders to cease and desist.

The Division completed an industry-wide investigation of advertising and promotional practices of manufacturers and large distributors of so-called "orthopedic" and "health" shoes, involving 103 companies with an aggregate sales volume of \$710,000,000. This investigation dealt with claims to the effect that various stock shoe products, especially those for children, insure healthy feet and correct and prevent deformities of the feet and poor posture. (Corrective action was recommended by the Division in 64 separate cases arising from this survey.

In addition to false and misleading advertising, the charges in cases investigated by the Division during the year included misbranding, fictitious price-marking, failure to deliver, failure to make refunds, false disparagement of competing products, offering second-hand goods as new, concealment of and failure to disclose foreign origin, simulation of trade-name or product, and lottery methods of sale. Among the important products covered by the investigations were

clothing, food, medicines (human and animal), therapeutic devices, building materials, automotive products and accessories, insecticides and related products, sewing machines, furniture, rugs, cosmetics, correspondence courses, encyclopedias, magazines, jewelry, electrical appliances, alcoholic beverages, and cigarettes. Three investigations involving alleged false advertising of oleomargarine were pending at the year end.

The Division of Investigation contributed materially to the Commission's defense survey work during the last 4 months of the fiscal year by detailing some 30 percent of its investigational staff to that work. In its regular work, the Division gave priority attention to products and practices especially important by reason of the defense emergency.

Medical and Chemical Opinions

Scientific facts and opinions play an important role in the investigation and trial of cases involving advertising claims made for food, drugs, therapeutic devices, cosmetics, and other commodities. These facts and opinions are furnished to the Commission by the Division of Medical and Chemical Opinions.

The Division arranges for analyses of samples of products under investigation and gathers information concerning their composition, nature, effectiveness, and safety. It provides medical opinions and scientific information needed in the preparation of formal complaints, the negotiation of stipulation-agreements, and the drafting of affidavits of scientific experts. It assists the legal staff in connection with hearings involving questions of science and secures the services of expert scientific witnesses.

During the fiscal year, the Division prepared 87 written opinions with respect to medical and scientific matters. In addition, it rendered oral opinions in 72 cases under investigation and in 51 cases where formal complaints had been issued. Personnel of the Division attended 8 informal conference-hearings and 28 formal hearings. The Division arranged for the appearance at hearings of 32 expert scientific witnesses.

The Chief of the Division is the Commission's liaison officer with the Food and Drug Administration and with the Insecticide Division, Livestock Branch, Production and Marketing Administration of the Department of Agriculture. Cooperation with these agencies has brought to the Commission necessary information and other assistance in handling cases involving food, drugs, devices, cosmetics, and "economic poisons" such as insecticides, fungicides, rodenticides, and weed exterminators. Through the Division, the Commission maintains cooperative contact with other Government agencies concerned

with food, drugs, devices, cosmetics, and other commodities which involve questions of science. Included among these are the National Bureau of Standards, the U. S. Public Health Service, the Bureau of Animal Industry and the Bureau of Plant Industry, Soils, and Agricultural Engineering. Similar contacts also are maintained with many nongovernmental clinics, hospitals, laboratories, and individual scientists.

ANTIDECEPTIVE CASES IN FEDERAL COURTS

Petitions for review:

Commission orders affirmed -----	5
Commission orders affirmed after modification -----	4
Petition for review dismissed -----	1
Cases remanded to Commission -----	1
Certiorari denied by Supreme Court -----	1
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Total petitions for review disposed of -----	12
New petitions for review filed -----	32
Petitions for review pending June 30, 1951 -----	25
Petition for injunction denied -----	1 ¹

[In the text which follows, United States Courts of Appeals are designated as "First Circuit (Boston) ," etc.]

Cases Decided

Federal court cases involving Commission antideceptive proceedings were featured by a suit for a preliminary injunction against Rhodes Pharmacal Co., Chicago, to stop allegedly false advertising of the medicinal preparation Imdrin. When the injunction was denied by the U. S. District Court in Chicago, the Commission appealed, and the case was pending in the Seventh Circuit (Chicago) as the year ended.²

Other cases decided involved petitions for review of Commission cease-and-desist orders. Ten of these decisions were favorable to the Commission, including one dismissal of a petition for review and four cases in which the orders were armed after some modification. Cases in which the Commission's orders were affirmed without change were:

Bristol-Myers Co., New York. Fourth Circuit (Richmond). False and misleading advertising of Ipana toothpaste.

Concrete Materials Corp., Chicago. Seventh Circuit (Chicago). Misrepresentation in the sale of "waterproofing" materials.

Independent Directory Corp., New York, and others. Second Circuit (New York). Deceptive practices in the solicitation of advertisements for business directories.

¹ District Court decision reversed on appeal and injunction granted on remand. See footnote 2.

²Reversed and remanded to District Court July 5, 1951. Preliminary injunction granted September 25, 1951.

P. Lorillard Co., Jersey City. Fourth Circuit (Richmond). False advertising of Old Gold cigarettes and other tobacco products.

Steelco Stainless Steel, Inc., Chicago. Seventh Circuit (Chicago). Misrepresentation in the sale of cooking utensils and unfair disparagement of competitive products.

The petition of Benjamin D. Ritholz (National Optical Stores), Chicago, for review of an order against false advertising of optical goods was dismissed by the Seventh Circuit (Chicago) for failure to prosecute.

The four cases in which Commission orders were affirmed after modification included:

Carter Products, Inc., New York. Seventh Circuit (Chicago). False advertising of the deodorant Arrid.

Jessie D. Folds and others (Kleerex Co.), Chicago. Seventh Circuit (Chicago). False advertising of the medicinal preparation Kleerex.

Gold-Tone Studios, Inc., Rochester, N.Y. Second Circuit (New York). Misrepresentation in the sale of photographs.

Jack Galter and others (Elgin Razor Corp.), Chicago. Seventh Circuit (Chicago). Misrepresentation in the sale of razors, clocks, and other merchandise.

One case (Gay Time Frock Co., Scranton, Pa., and others) was remanded to the Commission, at its request, by the Seventh Circuit (Chicago), for the purpose of dismissal after the petition for review was withdrawn. The Commission then set aside, for lack of jurisdiction, its order against deceptive failure to reveal the rayon content of wearing apparel.

The Supreme Court denied the Commission's petition for writ of certiorari to review the decision of the District of Columbia Circuit modifying the Commission's order against false advertising of food and drug products in the case of Ada J. Alberty and others, Hollywood, Calif.

Pending Cases

Cases pending in the courts as the year closed included:

Bork Manufacturing Co., Brooklyn. Ninth Circuit (San Francisco). Sale of lottery devices in interstate commerce.

Carter Products, Inc., New York. Ninth Circuit (San Francisco). False advertising of Carter's Little Liver Pills.

C. Howard Hunt Pen Co., Camden, N. J. Third Circuit (Philadelphia). Misrepresentation in the sale of fountain pen points.

Consolidated Royal Chemical Corp., Chicago. Seventh Circuit (Chicago). False advertising of the medicinal preparation New Pe-Ru-Na.³

³ Order affirmed Oct. 22, 1951.

E. & J. Distributing Co., (Jacob Colon and others), New York. Second Circuit (New York). Sale of lottery devices in interstate commerce.

Hamilton Manufacturing Co., Minneapolis. District of Columbia Circuit. Sale of lottery devices in interstate commerce.

Jack Galter (Elgin Razor Corp.) and others, Chicago. Supreme Court. Petition for writ of certiorari to review decision of the Seventh Circuit (Chicago) modifying and affirming and enforcing, as modified, the Commission's order banning misrepresentation in the sale of razors, clocks, and other merchandise.

Globe Cardboard Novelty Co., New York. Third Circuit (Philadelphia). Sale of lottery devices in interstate commerce.

L. Heller & Son, Inc., New York. Seventh Circuit (Chicago). Deceptive failure to reveal the foreign origin of imitation pearls. Four other cases involving the same practices were consolidated in this petition for review. The other petitioners were: D. Lisner & Co., Colonial Bead Co., Royal Bead Novelty Co. and Coro, Inc., all of New York.⁴

Leo Lichtenstein and others, Chicago. Ninth Circuit (San Francisco). Sale of lottery devices in interstate commerce.

Mary Muffet, Inc., St. Louis. Seventh Circuit (Chicago). Deceptive failure to reveal the rayon content of wearing apparel. Five other cases involving the same practices were consolidated in this petition for review. The other petitioners are: Irene Karol, National Dress Goods Co., Daresh Garment Co., Inc., Frelich, Inc., and Wax Bros. & Rosenberg Dress Co., Inc., all of St. Louis.

National Toilet Co., Paris, Tenn. Seventh Circuit (Chicago). False advertising of cosmetic preparations.

Rembrandt Studios, Washington, D. C. Fifth Circuit (New Orleans). Misrepresentation in the sale of photographs.⁵

R. J. Reynolds Tobacco Co., Winston-Salem, N. C. Seventh Circuit (Chicago). False advertising of Camel cigarettes.⁶

Joseph Rosenblum (Modern Manner Clothes), New York. Second Circuit (New York). Deceptive use of the word "free" in connection with the sale of wearing apparel.

World Syndicate Publishing Co., Cleveland. Second Circuit (New York). Misrepresentation in the sale of dictionaries.

⁴ Orders affirmed Oct. 30, 1951.

⁵ Petition dismissed Oct. 23, 1951, for failure to prosecute.

⁶ Order affirmed after modification Nov. 1, 1951.

INFORMATIVE LABELING OF WOOL PRODUCTS

Establishments covered in field inspection and industry counseling work -----	12,091
Wool products inspected -----	25,487,028
Opinions and interpretations rendered under the Wool Act and regulations -----	623
Informal cases involving labeling deficiencies in which compliance was effected administratively	14,379
Registered identification numbers issued -----	698
Continuing guaranties filed -----	1,263

The Wool Products Labeling Act provides in substance that purchasers shall be informed as to the true content of products which are made or purport to be made in whole or in part of Woolen fiber. It is designed to safeguard producers, manufacturers, merchants, and purchasers of wool products against deception and unfair competition arising from misbranding and nondisclosure of fiber content information.

The fiber content of articles containing, purporting to contain, or represented as containing "wool," "reprocessed wool" or "reused wool" must be disclosed by appropriate stamp, tag, label, or other mark. The act applies to such articles, with specified exceptions, when manufactured for or marketed in "commerce."

The act requires that the label or other means of identification disclose the kind and percentage of each different fiber contained in the product, including the respective percentages of "wool," "reprocessed wool" and "reused wool," and also the maximum percentage of loading and adulterating material, if any. The identity of the manufacturer of the wool product or of a person or firm marketing the product in interstate commerce must also be shown on the label. The label, or a proper substitute containing the required information must not be removed or mutilated by the dealer but must remain on the merchandise when delivered to the purchaser-consumer.

Manufacturers of wool products subject to the act are required to maintain and preserve fiber-content records. Civil penalties are provided for failure to maintain such records.

Products covered by the act include not only finished articles such as wearing apparel and blankets but also the yarns and fabrics from which they are made. These include products of approximately 100 industries which are marketed through some 240,000 distributor and dealer outlets.

Rules and regulations under Wool Act.— Rules and regulations promulgated by the Commission under the authority of the statute are available in booklet form upon request. They provide for manufacturers, distributors, and dealers guidance on how to comply fully with the law. Another publication available on request (W-31a) contains illustrations, with explanatory text, of tag and label forms acceptable under the statute.

Registered identification numbers.—The regulations provide that registered identification numbers may be assigned upon proper application not only to manufacturers of wool products but also to persons subject to the labeling requirements of the act who market wool products in interstate commerce. They also provide that a registered identification number may be used on the label, tag, or other mark as and for the name of the person to whom the number is assigned.

Continuing guaranties.— For the purpose of protecting distributors, dealers, and other resellers, from the charge of misbranding when relying in good faith upon the statement of content furnished by the supplier, provision is made for a guaranty on the part of the supplier. It may be either a separate guaranty specifically designating the wool product guaranteed or a continuing guaranty filed with the Commission and applicable to all products handled by the guarantor. Continuing guaranties are recorded and are open to public inspection.

Enforcement.— In cases involving misbranding which require corrective action by formal proceedings, the use of the cease-and-desist order procedure authorized by the Wool Act has proved adequate. The supporting procedures (condemnation and injunction) specifically provided by the Wool Act are available when needed, however, and in cases of deliberate or willful violation, criminal penalties may be sought.

Administrative compliance work during the year included field inspection and industry counseling, which, in most instances, resulted in voluntary correction of labeling practices by concerns throughout the country.

Compliance inspection work was carried on with 12,091 manufacturers, distributors, and other dealers in wool products. Compliance inspections were made in 33 States and covered approximately 25,487,000 articles. During the preceding fiscal year, compliance inspections of 11,968 concerns were made.

In accordance with the Commission's policy of encouraging law observance through cooperation, many cases involving labeling deficiencies of a technical or minor nature have been corrected administratively. In relatively few cases has it been necessary to invoke formal corrective proceedings. Informal administrative compliance work has proved an effective and economical method of protecting the public interest in this field.

FUNDS EXPENDED

Expenditures of the Bureau of Antideceptive Practices during the fiscal year were as follows:

Director's Office	-----	\$28,557
Division of Litigation	-----	181,065
Division of Investigation	-----	473,996
Division of Wool Act Administration	-----	236,071
Division of Medical and Chemical Opinions	-----	41,898
Total	-----	<u>961,590</u>

6

Industry Cooperation

SECTION 5 of the Federal Trade Commission Act directs the Commission to "prevent" the use in commerce of "unfair methods of competition" and "unfair or deceptive acts or practices." In carrying out this statutory direction, the Commission does not rely solely on the use of formal legal proceedings resulting in mandatory orders to cease and desist. It also makes extensive use of voluntary and cooperative procedures as an effective supplemental means of preventing unlawful practices. This program of "industry cooperation, emphasizing voluntary observance of the laws administered by the Commission, is now centralized in the Bureau of Industry Cooperation, consisting of the Division of Trade Practice Conferences and the Division of Stipulations.

Industry conferences and individual stipulation-agreements exemplify the cooperative approach to the problem of preventing trade practices condemned by the law as "unfair." Trade practice conferences sponsored by the Commission provide members of an industry the opportunity to cooperate in establishing rules for the prevention of unfair practices on an industry-wide basis. The stipulation procedure limits the settlement of certain types of cases by agreement without the necessity of formal proceedings.

Through these procedures, business and industry may obtain authoritative guidance and a substantial measure of certainty as to what they may do under the laws administered by the Commission. To the extent that such cooperative procedures bring about widespread voluntary observance of the law, they avoid the necessity for formal litigation. The result is that both industry and Government; save time and money. Thus, the average citizen benefits in his capacity as a taxpayer. He also benefits directly when industry cooperation results in the prevention of trade practices injurious to him either as a businessman or as a consumer. Another benefit stemming from the program of industry cooperation is the wealth of information made available to the consumer as to what he may rightfully expect in his dealings with business.

Industry cooperation received continuing attention from the Commission during the year as one of its major programs. It is the policy of the Commission to utilize the trade practice conference and stipulation procedures to the greatest possible extent. But cases are not disposed of by voluntary agreement—either through trade practice conference proceedings, or through the stipulation procedure—if they involve violations of the Clayton Act, combination or collective action in restraint of trade, or practices which are fraudulent or inherently dangerous to health.¹

TRADE PRACTICE CONFERENCE PROCEEDINGS

Rules promulgated	7
Rules revised	2
Industry conferences held	9
Public hearings held	13
Proceedings closed	14
Conference proceedings authorized	22
Applications pending	9
Rule violation cases handled	1,100

Conference Procedure

The Commission's trade practice conference procedure represents a practical application of the principle of self-regulation. It results in the cooperative establishment of rules designed to prevent unfair trade practices in a particular industry. The aim is to bring about law observance on an industry-wide basis. This is achieved by enlisting the cooperation of industry members and other interested parties, including consumers, in a joint attack on unfair methods of competition and other practices harmful to the industry or to the consuming public. Protection of the public from false and misleading advertising and other illegal practices is the primary purpose of conference proceedings.

Members of an industry for which a conference proceeding is authorized are invited to meet with Commission representatives in a trade practice conference. At the conference there is full and frank discussion of the unfair practices prevalent in the industry and of proposals to prevent them. On the basis of the information and suggestions developed at the conference, a draft of proposed rules is prepared and made available to all concerned for study and comment. Then industry members and others interested—such as consumers—are given an opportunity to present their views, suggestions, or objections concerning the proposed rules. This may be done in writing or orally at a public hearing.

¹ See page 136 for the complete text of the Commission's policy on settlement of cases by trade practice conference and stipulation agreements.

After consideration of all matters presented in the proceeding the Commission promulgates rules which specify in detail the industry practices deemed to be "unfair" and violative of law. The rules define and proscribe such practices. They apply the requirements of the statutes, as interpreted by the Commission and the courts, to the problems and practices of the particular industry. Thus, whereas the Federal Trade Commission Act outlaws in general terms "unfair methods of competition" and "unfair or deceptive acts or practices," trade practice rules translate these general prohibitions of the statute into specific prohibitions of specific practices. The rules for the canvas cover industry, for example, make clear that one "unfair" practice in that industry is the misuse of such terms as "fireproof" and "flameproof." Both the marketer and the buyer of canvas covers are put on notice that these terms must be limited to canvas covers that are actually "incombustible" and will remain so throughout their expected life under normal use. Similarly, manufacturers and distributors of bedding, as well as consumers, are authoritatively advised by rules for that industry that bedding products may not be described as "orthopedic" unless they meet certain specifications.

The cooperative establishment of rules often effects immediate and simultaneous correction of trade abuses which might otherwise require prosecution of protracted suits. The expense of investigation and trial of the type sometimes necessary in a single instance may be equal to the entire annual budget of the Division of Trade Practice Conferences. Simplicity and economy in operation are distinctive advantages of the conference plan.

Conference proceedings may be initiated by the Commission upon its own motion or upon application filed by any interested person, party, or group. While most conference proceedings are authorized upon application of a particular industry or trade group, applications may also be made by farm, labor, or consumer groups. The Commission authorizes conference proceedings when such action is considered to be in the public interest and a constructive force for good in the industry.²

A close working arrangement is maintained with industries for which rules are promulgated. In this way, industry members are given guidance in their efforts to avoid practices condemned by the rules. Members of the Commission's staff are available to assist industry representatives in working out constructive solutions of problems encountered in conforming trade practices to the requirements of law as set forth in the rules. At the same time, the Commission is kept informed of industry conditions and problems necessitating rule amendment or other action.

² Procedural requirements for establishing trade practice rules are set forth in detail in rule XXVIII of the Commission's Rules Of Practice. (See page 130.)

Classification of Rules

Trade practice rules may include not only provisions for prevention of practices which are illegal *per se* or conducive to unfair competitive conditions in the industry, but also provisions for fostering and promoting fair competition in the public interest. The Commission classifies promulgated rules as either Group I or Group II rules.

Group I rules.—Rules in this category cover practices considered illegal under laws administered by the Commission, as construed in decisions of the Commission and the courts. The Commission is empowered to take appropriate action in the public interest to prevent the use of these unlawful practices in commerce by any person, partnership, corporation, or other organization subject to its jurisdiction. Group II rules.—Rules of this type embrace permissive practices and voluntary restrictions considered conducive to the maintenance of free and fair competition. These rules are wholly voluntary as distinguished from the mandatory requirements of law expressed in Group I rules. Provisions of this type must be consistent with the law and the public interest.

Rules Promulgated

Rules promulgated during the year relating to the retail installment sale and financing of motor vehicles constitute an outstanding example of the use of the conference procedure to bring about simultaneous correction of widespread trade evils injurious to the public.

The principal target of these rules is the concealment of overcharges in installment sales of new and used cars. The rules are the result of conference proceedings begun during the previous fiscal year. The proceedings were prompted by complaints reaching the Commission that automobile purchasers were being grossly overcharged when they bought on the installment plan. These complaints came to the Commission directly from consumers, from such organizations as Better Business Bureaus and the American Automobile Association, and from numerous members of Congress.

The Commission has no authority to regulate finance charges as to amounts. But it was apparent that the overcharges were being imposed by means of an unfair and deceptive practice within the Commission's jurisdiction. The overcharges were extracted, it was shown, by "packing" in the total price an unidentified sum over and above the actual finance charge. This sum was included in the installment payments made to the finance company and then "kicked back" to the dealer. According to estimates made by informed sources, the "pack" practice was costing the public many millions of dollars annually in concealment of exorbitant and fictitious charges.

In some cases, "packed" charges of as much as 100 percent had been concealed.

In the Commission's consideration of the problem it became clear that the solution was relatively simple. The cure lay in preventing the deception by which the overcharge was concealed from the purchaser. It also became clear that to attack the practice by piecemeal litigation would be both impracticable and unduly costly. The Commission concluded, therefore, that the most feasible and equitable approach was a trade practice conference proceeding. The proceeding was accordingly started on the Commission's own motion. All members of the industry were given an opportunity to participate, as were all other interested persons and groups.

The result was the promulgation in February 1951 of five simple Group I rules. In order to allow all concerned sufficient time to make the necessary adjustments, the effective date was extended to July 7, 1951.

To prevent the practice of concealed "packing," the rules require that the purchaser be furnished with an itemization of the finance charge, insurance costs, and other charges before consummation of the sale. Related practices condemned by the rules include use of deceptive rate charts, the execution of contracts containing blank spaces; misrepresentation of insurance coverage or rates, or of finance charges; and forcing purchasers to obtain insurance from a particular company.

At the outset of the proceedings, there was opposition from many industry members. But since promulgation of the rules, there has been widespread industry cooperation. More than 43,000 dealers and finance companies have signed and returned to the Commission "acceptance cards" signifying their intention to comply with the rules. In addition, many national banks voluntarily expressed their intention to conform their car financing operations to the rules notwithstanding the Commission's lack of jurisdiction over them.

To insure widespread understanding of the rules, approximately 119,000 copies have been distributed. And through correspondence and conferences with staff members, industry members have been aided in applying the rule requirements to their special problems.

Other industries for which rules were promulgated and the principal practices covered are described below.

Canvas cover industry.—Members of this industry are engaged in manufacturing, finishing, treating, processing, or marketing canvas covers, such as tarpaulins, truck covers, flat covers, drop cloths, tents, canopies, and awnings. Among the subjects covered by the rules are misrepresentation of the resistance of canvas covers to fire, water

passage, weather, or mildew; inadequate disclosure as to size of products and kind and weight of fabric; harmful and excessive stretching; misuse of such terms as "custom-made" and "shrunk"; loading or adulterating products; and failure to disclose presence of used materials.

Bedding manufacturing and wholesale distributing industry.

Industry products covered by these rules include mattresses, bedsprings, metal beds, studio couches, and similar sleeping equipment. Among the subjects covered by the rules are deceptive concealment or nondisclosure of the nature of mattress filler materials; and deceptive use of such terms as "Rx", "Posturized", "Waterproof", "Orthopedic", "Latex", and "Foam Rubber."

Cocoa and chocolate industry.—Members of this industry are engaged in the manufacturing, processing and sale of cocoa and chocolate products marketed for use by the consumer without further commercial processing. The rules are designed to prevent deceptive use of the word "free"; coercing purchase of one product as prerequisite to the purchase of other products; marketing of products through lottery methods; and unlawful discrimination in price or promotional services or facilities.

Slide fastener Industry.—Members of this industry include manufacturers, assemblers, and distributors of zippers. The rules prohibit as unfair the nondisclosure of the foreign origin of slide fasteners or other component parts; misrepresentation of the length of zippers; and competition-stifling exclusive-dealing arrangements with dealers. Group II rules cover such subjects as arbitration of disputes, dissemination of credit information, filing of trademarks, and the furnishing of excessive free samples to prospective consumers. In addition, definitions of significant trade terms are included.

Seam binding industry.—This industry manufactures, distributes, and markets seam binding, which is narrow fabric (other than bias binding) used in the manufacture of wearing apparel to prevent raveling or fraying at seams and hems. The rules are directed primarily against misrepresentation of fiber or material content, yardage, and type of edges of seam binding. Also included are provisions concerning false invoicing and unlawful discrimination in price or promotional services or facilities.

Parking meter industry.—The business of this industry is the manufacture and marketing of parking meters and related parts and accessories. The rules are directed against various forms of misrepresentation and deception in the advertising or sale of industry products, and also against commercial bribery, inducing breach of contract, deceptive guarantees, fictitious price quotations, and false invoicing.

Rules Revised

Existing rules for two industries were revised:

Milk bottle cap and closure industry.—Members of this industry are engaged in the fabrication, sale and distribution of milk bottle caps, hoods, and closures of all kinds. Rules promulgated for the paper bottle cap industry in November 1931 were revised and extended to cover all milk bottle caps and closures regardless of composition. The revised rules cover such subjects as misrepresentation of industry products and of the character of business of industry members; deceptive use of trade-marks; unlawful coercion or combinations in restraint of trade; commercial bribery; unlawful selling below cost; and unlawful discrimination in price or promotional services or facilities. Group II rules embrace such subjects as arbitration of disputes, repudiation of contracts, and maintenance of accurate records.

Feather and down products industry.— Members of this industry are engaged in the manufacture, processing, distribution, and sale of pillows, comforters, sleeping bags, and similar products, which are wholly or partially filled with feathers or down. These rules constitute a revision and extension of those promulgated for this industry in July 1932. The revised rules contain a new description of the industry covered, as well as definitions of significant trade terms such as "down," "down fiber," "waterfowl feathers," and "natural feathers." They establish trade tolerances as to content and size and describe acceptable labeling practices. The rules also cover use of second-hand materials and cleanliness of feather and down stocks. Other provisions are directed against such unfair practices as fictitious price lists; false invoicing; commercial bribery; defamation of competitors; and unlawful discrimination in price or promotional services or facilities. The estimated annual value, at the manufacturers' level, of products covered by these rules is in excess of \$30,000,000, more than 80 percent of which is produced by industry members who actively cooperated in the revision proceeding.

Pending Conference Proceedings

In addition to proceedings which resulted in promulgation of rules, other proceedings were in progress at the close of the fiscal period.

Rules for the cosmetic and toilet preparations industry were approved June 27, 1951. They were scheduled to become effective February 1, 1952, but had not been formally promulgated when the fiscal year ended.

Members of this industry are engaged in manufacturing, importing, selling, or distributing cosmetics, toilet preparations, or devices or accessories sold in combination with such products. One important provision is designed to clarify the requirements of the Clayton

Act, as amended by the Robinson-Patman Act, with respect to the supplying of marketing services, facilities, or allowances by industry members to their customers. The rules also contain provisions concerning the illegal use of "spiffs" and "push money" and deception as to foreign origin of industry products.

Conferences were held for revision of existing rules for the rayon industry and the radio receiving set manufacturing industry. The primary purpose of the rayon proceeding was to consider a proposal that the rules be modified to require a distinction in nomenclature between regenerated cellulose yarns (made by the viscose and cuprammonium processes) and cellulose acetate yarns (made by the acetate process).

One of the important proposals in the radio proceeding is to enlarge the scope of the present rules so as to cover television receiving sets and their component parts.

Conferences were also conducted for the gladiolus bulb industry, the floor machinery industry, the set-up paper box industry, the narrow fabrics industry, and the natural, cultured, and imitation pearl industry.

Public hearings were conducted on proposed revisions of rules for the hearing aid industry, the sun glass industry, the commercial cold storage industry, and the upholstery and drapery fabrics industry. Other public hearings concerned proposed rules relating to use of the terms "gold," "karat," and "solid" in describing articles composed solidly and throughout of an alloy of gold; proposed rules relating to use of such terms as "shrink-proof," "shrink resistant," and "washable" as descriptive of wool products; and proposed rules for the floor wax and floor polish industry and the set-up paper box industry.

Rule Administration

The cooperative approach which characterizes the proceedings leading to the promulgation of rules carries over into the administration of rules. The emphasis is on obtaining, through cooperative efforts, the highest possible degree of voluntary law observance. Informal administrative procedures are constantly used to insure that industry members understand and observe the rules established for them. Such action may be by means of correspondence, office conferences, or field contacts.

The close working liaison maintained with industry members enables the Commission to discover instances of rule violations and to promptly seek cooperative action to correct them. At the same time, there is a continuous check on the adequacy of the rules in meeting industry needs and the development of competitive conditions necessitating revision of rules. In this way, industry members are

given assistance in avoiding practices which might subject them to charges of violating the laws administered by the Commission.

Nearly 1,100 cases, involving 2,341 alleged rule violations, were satisfactorily disposed of through informal administrative action during fiscal 1951. Thirty-one cases were referred to the Commission or its other bureaus for appropriate action. Cases of alleged rule violation pending at the close of the year totaled 197.

Typical of the industries receiving special attention were the following:

Baby chick industry.—A large number of breeders offered for sale many kinds of "crossbred" and "in-crossbred" chicks for which were made a wide variety of false or exaggerated representations as to livability, egg laying, and meat-producing potentialities. Administrative action resulted in modification of such advertising representations to the extent necessary to comply with the industry's trade practice rules. By working closely with officials of the National Poultry Improvement Plan of the U. S. Department of Agriculture, with participating State agencies, and with the industry's trade association, many misrepresentations relating to the sex and breed of baby chicks, as well as to the business status and plan participation of breeders, were discovered and discontinued.

Fountain pen and mechanical pencil industry.—The practice of marking pen and pencil sets with exaggerated or fictitious prices has been substantially curtailed through administration of the industry's trade practice rules. Progress has also been made in bringing about voluntary observance of rule requirements designed to prevent deception in advertising, marking, or branding as to the gold content of the metallic parts of pens and mechanical pencils.

Mail-order insurance industry.—Cooperative work with firms engaged in the interstate promotion and sale of insurance by mail resulted in significant revision of their advertising material. Among other things, advertisements of health, accident, and hospitalization insurance were revised so as to disclose unusual exceptions, limitations, and reductions contained in the policies. Where policy contracts provide that policyholders are subject to assessments in excess of the advertised premiums, this fact must be disclosed to prospective purchasers.

Masonry waterproofing industry.—Deceptive advertising practices which were formerly prevalent in the industry have been substantially curtailed as a result of administrative contact with industry members. The principal objective has been to eliminate from advertising and labeling material certain representations exaggerating the degree and permanence of water impermeability to be achieved by the use of industry products.

Rayon industry.—Extensive cooperative compliance work under these rules has been taken in the form of advertising surveys, office conferences, field work, and voluminous correspondence. In this way both the industry and the consuming public have been protected from the deception arising from failure to disclose the fiber content of products containing rayon. Steps have also been taken to prevent various other deceptive methods employed in the advertising and sale of rayon products.

SETTLEMENT OF CASES BY STIPULATION

Stipulations accepted -----	³ 157
Cases closed -----	41
Complaints Directed -----	8
Referred for further investigation -----	20
Placed on suspense -----	5
<hr/>	
Total disposition -----	231
Conference hearings held -----	108

The voluntary, cooperative approach is also reflected in the settlement of cases without resort to the formal complaint and trial method. In certain types of cases involving unfair methods of competition or unfair or deceptive practices, when there has been no fraudulent intent,⁴ the Commission offers businessmen the opportunity of entering into voluntary agreements to discontinue practices considered violative of law.

The Division of Stipulations in the Bureau of Industry Cooperation is charged with the duty of negotiating settlements under the stipulation procedure. The Division does not investigate or prosecute any matter. Its procedure is to notify the businessman concerned that certain of his business practices have been challenged as illegal. The notice includes a statement of the specific practices which preliminary investigation indicates should be discontinued. The businessman may reply by letter or confer, either in person or through an authorized representative, with the chief or assistant chief of the Division of Stipulations or with an attorney-conferee. He is given opportunity for an informal conference-hearing in which one or more staff members of the Bureau of Antideceptive Practices who were concerned with the case during its investigational stage may also participate.

The procedure encourages frank, informal, and thorough discussion of the facts and issues involved, either by correspondence or in

³ Includes 13 amendment stipulations.

⁴ See page 136 for the full text of the Commission's policy on settlement of cases by stipulation.

conference. The result is generally an amicable settlement providing protection of the public interest; but avoiding prolonged litigation. Where the charges are considered to have been substantiated, a stipulation of facts and an agreement to cease and desist are presented to the Commission for its consideration in disposing of the case. Or this informal proceeding may result in a recommendation for closing the case, either in whole or in part, or for other action in accordance with the law and the public interest.

Cases disposed of by stipulation-agreements during the fiscal year covered a wide range of unfair or deceptive practices, particularly in the field of false and misleading advertising. The following summary illustrates the nature of the cases handled in this way.

Two makers of electric water heaters agreed to attach to their devices a warning that dangerous electric shock may result unless directions for use are carefully followed. Several sellers of insecticides and rodenticides discontinued sweeping claims as to the effectiveness and safety of their products. Agreements were reached with eight companies for an end to claims that their antihistamine preparations will cure or prevent the common cold. A varnish will no longer be advertised as "weatherproof" or "alkali-proof."

Advertisements of several hair preparations were revised to eliminate claims that they control dandruff or prevent baldness. One firm promised to stop representing its product would regrow hair. Misuse of the term "waterproof" in describing mattresses and related products was halted in several instances. Several agreements provided for discontinuance of unwarranted claims for medicinal preparations. Another practice covered in several stipulations was that of fictitious price-marking. A lumber company agreed to stop advertising, contrary to fact, that its lumber is cut to standard sizes within allowable tolerances.

Sellers of such automotive products as gasoline additives and a "wattage regulator" agreed to eliminate from their advertisements certain performance claims not warranted by the facts. Buyers of metal awnings were protected from deception when several sellers agreed to stop advertising their products as windproof or stormproof. Other claims discontinued were to the effect that the initial cost was the only cost because the awnings required no maintenance.

Claims for synthetic starches were modified considerably as a result of the stipulation procedure. Several companies agreed to stop making sweeping statements that their products greatly prolong the life of fabrics, while others promised to discontinue claims of "permanence." A cigarette maker stipulated that it would refrain from advertising that its cigarettes provide a defense against throat irritation. In another case, a manufacturer of pens and pencils agreed to stop evading the terms of its service guaranty.

Voluntary corrective action was taken in two instances by sun glass makers after the Commission challenged their advertising claims. One case involved claims that the sun glasses met prescribed standards when there was no adequate control to insure that they did. Representations that vegetable fiber sealing compounds are metallic solders or will effect "permanent" repairs were discontinued in two cases.

The stipulation procedure also put an end to claims that pine oil disinfectant kills the germs that cause pneumonia, diphtheria, and tetanus. And perfumes compounded in the United States by a New Jersey firm will no longer be represented as "French." Numerous claims as to the reducing and health-giving effects of an electric vibrator were discontinued as contrary to the facts.

After stipulations are accepted by the Commission, the Division of Stipulations obtains reports showing how the signer is complying. These reports must be in writing and signed by the interested parties. In some cases, the reports must be accompanied by representative specimens of all advertising in current use. During the fiscal year 151 reports of compliance were obtained and submitted to the Commission.

FUNDS EXPENDED

For trade practice conference work, a total of \$190,646 was spent during the fiscal year. The amount expended by the Division of Stipulations was \$85,483. Total expenditures for the work of the Bureau of Industry Cooperation were \$276,129.

7

Case Work Progress Under New Procedures

CONSIDERABLE PROGRESS was made during the year in the continuing program to bring the Commission's legal case work to a more current status. In fiscal 1951, the Commission disposed of 162 cases in which complaints had been issued, an increase of 13 percent over the 143 cases disposed of during the preceding year. While 311 cases were pending at the close of fiscal 1950, the number was reduced to 260, a decrease of 16 percent, by the end of fiscal 1951.

Of the cases disposed of during 1951, 121 resulted in cease-and-desist orders, an increase of 53 percent over the 79 cease-and-desist orders issued in 1950. In addition, during 1951, 9 cases in which formal complaints had been issued were settled by acceptance of stipulations to cease and desist instead of by formal orders. Two cases had been thus settled during 1950.

Cease-and-desist orders in antimonopoly cases totaled 23, an increase of almost 44 percent over the 1950 total of 16. In antideceptive practice cases, 98 orders to cease and desist were entered, or an increase of 55 percent over 1950, when the number was 63. When cases settled by stipulation are included, the respective antideceptive case totals are 107 and 65, and the increase in corrective actions in 1951 amounts to nearly 65 percent.

In informal cases—that is, where formal complaints were not issued—157 stipulations to cease and desist were accepted during 1951, a decrease from the 1950 total of 164. Informal cases disposed of by administrative treatment—that is, by letters or affidavits of discontinuance—showed an increase, however, aggregating 281 in 1951, as compared to 253 in 1950.

At the close of fiscal 1951, 995 applications for complaint, involving both monopolistic and deceptive practices, were pending, compared to 1,166 at the close of the previous year. Formal complaints issued in 1951 totaled 109, compared with 124 in 1950.

The increase in the number of formal cases disposed of represents a forward stride in the Commission's effort to clear from its docket a backlog of cases pending for long periods, as well as to expedite the disposition of current cases. The progress made in this program is

attributable in large measure to procedural changes adopted for the purpose of avoiding delays. One of the principal changes was the amendment of the Rules of Practice, effective in June 1950, to authorize trial examiners to make "initial decisions" in the cases they hear. These decisions then become Commission decisions unless appeals are taken or unless the Commission, on its own initiative, docket a case for review. The former practice was for trial examiners to make a report on the evidence and a "recommended decision," with the "initial decision" being made by the Commission.

The new procedure, which is authorized by the Administrative Procedure Act, has the effect of making trial examiners an initial trial court whose decisions are subject to review by the Commission.

The first year of operation of the initial decision procedure has more than fulfilled the hope expressed when it was adopted that, by eliminating much duplication of work, it would speed action on cases. During fiscal 1951, production by the trial examiners showed a marked increase despite a reduction in staff.

During 1951, 9 trial examiners submitted 102 initial decisions, plus 17 recommended decisions in cases where the former rule was applicable. During 1950, 16 trial examiners had prepared 47 recommended decisions and 1 initial decision and had certified the record to the Commission in 12 cases in which admission answers were filed.

The production increase is accounted for partly by the fact that under the initial decision procedure, a trial examiner is not required to include a lengthy detailed report on the evidence, as formerly. This change alone results in a substantial saving of time.

Cases were speeded also by the practice of assigning a case to a trial examiner when the complaint is issued. In this way, trial examiners handle all preliminary and interlocutory motions instead of the Commission. The Commission is thus relieved from considerable onerous detail in the disposition of such motions, and the net effect is to eliminate delays.

The final disposition of a case is likewise expedited by the provision that an initial decision becomes a Commission decision 30 days after it is served unless it is appealed or docketed for review.

Fifty-seven initial decisions became effective during the fiscal year, 40 of them without appeal or review. Of 16 cases placed on the review docket, 14 were adopted by the Commission after review. Appeals were taken in 25 cases, with 3 initial decisions affirmed, 1 modified, and 21 pending at the end of the year. Initial decisions in 21 other cases were being processed as the year closed.

OTHER PROCEDURAL CHANGES

The year was marked by several other changes in the Commission's procedures and rules of practice designed to expedite the disposition of formal cases and reduce the time and expense required.

Just before the close of the fiscal year, the Commission adopted a rule of practice specifying in detail a procedure for settlement of cases based upon consent of the parties. The rules had previously provided only in general terms for the making and consideration of offers of settlement.

Under the new rule, a consent settlement consists of findings containing the jurisdictional facts and a statement of the acts and practices which the Commission had reason to believe were unlawful, together with an order to cease and desist, all entered by consent of the parties. The only admission a respondent need make under this procedure is an admission of the jurisdictional allegations of the complaint.

Reluctance of respondents to admit having engaged in unlawful practices has in the past resulted in long and expensive litigation in some instances where, except for the necessity for such admissions, the proceeding might have been settled without trial. It is believed that under the present rule many cases will be settled by the entry of findings as to the facts and order to cease and desist which will prevent a continuation of unlawful practices without having to go through the expense and delay involved in trial of the case. This procedure is analogous to the consent-decree procedure used by the Department of Justice in many of its civil cases under the antitrust laws.

Earlier in the year, changes were made in the rules of practice to provide for entry of default orders in cases where a respondent files no answer and does not contest the proceeding. Under these rule changes, when a provisional order to cease and desist is contained in the notice portion of the complaint and no answer is filed, and the proceeding is not contested, the provisional order contained in the complaint may be entered as the order disposing of the case. Heretofore, when there was no answer filed and no contest made, the Commission nevertheless was required to put in the evidence necessary to make out a prima facie case. The new procedure eliminates the necessity for the taking of evidence in such instances.

MANAGEMENT IMPROVEMENT PLAN

In addition to procedural changes, the Commission inaugurated a variety of internal administrative changes designed to promote efficiency and economy. These steps were taken under the Commission's

Management Improvement Plan. The Plan is a continuing project, which is expected to result in increasingly efficient utilization of the Commission's limited resources for the achievement of its statutory objectives.

INCENTIVE AWARDS PROGRAM

As part of the Management Improvement Plan, the Commission put into effect during the year an Incentive Awards Program. Its purpose is to encourage employee participation in management improvement, to provide the means for such participation, and to recognize by appropriate awards employees who make outstanding contributions to efficiency and economy in the operation of the Commission. The Efficiency Awards Committee of the Commission, composed of the General Counsel, the Director of the Bureau of Industrial Economics, and the Secretary and Executive Director of the Commission, representing respectively the legal, economic, and administrative services, administers the program in the Commission. All recommendations of the Committee for awards are submitted to the Chairman of the Commission for approval.

Thirty awards were made under the program during the fiscal year. These included two cash awards aggregating \$215 for employee suggestions leading to savings estimated at \$5,130 for the first year. Salary increases for distinguished and superior service went to employees, while honorary awards were presented to 20 employees.

Twenty-four employee suggestions were submitted, of which 2 were adopted, 10 rejected, and 12 remained pending.

8

The Commission's Work in Mobilization Program

COMMISSION PARTICIPATION in the defense mobilization program has been of a threefold nature: (1) Carrying out responsibilities assigned to it by the Defense Production Act; (2) undertaking work for defense agencies in fields in which its experience gives it special competence; and (3) realigning its regular work—both legal and economic—so as to give priority to the job of preventing practices detrimental to the defense buildup.

DUTIES UNDER DEFENSE PRODUCTION ACT

Under the Defense Production Act, the Commission has the duty of (a) consulting with defense agencies as to action which they intend to request pursuant to voluntary agreement where there is need for such action to be exempted from the antitrust laws, and (b) making surveys upon request by the Attorney General for the purpose of determining factors that may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of the Defense Production Act.

The role of the Commission during the defense emergency has been further defined in two Presidential memoranda directed to defense agencies. The first, dated September 28, 1950, requested defense agencies, in performing the functions delegated to them, to consult with the Attorney General and the Chairman of the Federal Trade Commission "for the purpose of determining and, to the extent consistent with the principal objectives of the act and without impairing the defense effort, of eliminating any factors which may tend to suppress competition unduly, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power."

Pointing out that "during the last war, the long-standing tendency toward economic concentration was accelerated," the President warned that "Partial mobilization, in the absence of protective measures, may again expose our economy to this threat and thereby imperil the very system we are seeking to protect."

The second memorandum, dated December 20, 1960, transmitted the Attorney General's first report concerning the dangers to a competitive enterprise economy which are inherent in mobilization for defense and stated that this report will be of assistance to defense agencies in identifying some of the problems about which they should consult with the Attorney General or the Federal Trade Commission and in carrying out their responsibilities in the defense program.

The Commission has made every effort to facilitate consultation with the defense agencies as provided in these Presidential statements. It has also made Special provisions to carry out its duties under the Defense Production Act.

Clearance of Antitrust Exemptions

Section 708 of the Defense Production Act authorizes the President to consult with representatives of industry, business, finance, agriculture, labor, and other interests, with the view to encouraging the making by such persons, with the approval of the President, of voluntary agreements and programs to further the objectives of the act. It further provides that no act, or omission to act, if requested by the President pursuant to a voluntary agreement or program approved thereunder and found by the President to be in the public interest as contributing to the national defense, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act. Copies of such requests must be furnished to the Attorney General and the Chairman of the Federal Trade Commission. In authorizing the President to delegate to certain officials his authority under section 708 (b) relating to exemptions from the antitrust laws and the Federal Trade Commission Act, the statute provides that such officials must consult with the Attorney General and the Chairman of the Federal Trade Commission before mailing any request or finding under the exemption proviso. It provides further, in effect, that such exemptions become effective only with the approval of the Attorney General.

Under this provision, when a defense agency has a matter coming within the scope of section 708 of the Defense Production Act, copies of the proposal are submitted through the appropriate liaison officers to the Attorney General and the Chairman of the Federal Trade Commission. Through interagency staff consultation, the matters involved are explored and a basis is established for the clearance provided in the act. Before such clearance is granted, the matters are examined with the view of minimizing, so far as possible, without interference with the defense effort, factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power.

In handling the work, close coordination and collaboration are maintained between the Department of Justice and the Federal Trade Commission, in cooperation with the defense agencies concerned.

Up to the close of the fiscal year, 13 voluntary industry programs and agreements were processed under section 708 of the Defense Production Act.

Surveys for the Attorney General

As already indicated, the Commission has a statutory duty to make surveys upon request by the Attorney General pursuant to the requirements of section 708 (e) of the Defense Production Act. The Attorney General's first report in accord with this section was made December 7, 1950. At the Attorney General's request, the Commission submitted a preliminary report which assembled and analyzed information about the competitive impact of mobilization activities during the Second World War and outlined the dangers to competitive enterprise inherent in a defense economy.

The Commission's report discussed the question of policy goals in a near-permanent defense economy and analyzed the dangers to competition. It covered such subjects as scarcity and emergency allocation problems, Government procurement, Government research and access to technology, new facilities, price controls, and fiscal measures. It emphasized the special problems of small business and the need for special measures to prevent it from being destroyed or weakened.

COMPLIANCE SURVEYS FOR NPA

The Commission was designated in February 1951 as the agency through which the Administrator of the National Production Authority may exercise his power to conduct surveys and investigations of the operation of, and the degree of compliance with, NPA orders and regulations. This designation was made in accordance with the policy of utilizing existing agencies, as far as possible, in carrying out the defense mobilization program. It was recognized that the Commission, with a staff of experienced attorney-examiners and accountants, was especially well-equipped to make the investigations needed by NPA. The work was accordingly assigned to the Division of Defense Surveys in the office of the Federal Trade Commission Chairman.

In a typical industry survey, Commission attorney-examiners investigate compliance with National Production Authority orders and regulations, covering such matters as the maintenance of inventories, the levels of production and delivery, the selection of end uses for materials, the use of supplies acquired for maintenance and repair, the

treatment of rated and unrated orders, the use of scrap, the operation of toll conversion and repurchase agreements, and the progress of plant conversion to essential defense production. The surveys involve field investigations by the Commission's staff, including plant and inventory inspections. The scope, timing, and technical aspects of each survey are determined in advance by conference between NPA and the Commission.

The factual record assembled in the course of the surveys is transmitted directly to NPA through the Chairman, and any decisions or conclusions concerning such matters as violations of orders and applications for modifications, adjustments, or exceptions are left to NPA.

During the 4-month period ended June 30, the Federal Trade Commission made surveys of the aluminum industry, the copper industry, and a representative cross section of various heavy industries. In the aluminum survey, involving such matters as inventories, end use, and distribution, the Commission covered 301 companies in 31 States. The copper survey involved coverage of 300 companies in 40 States. The third survey, which was completed shortly after the close of the fiscal year, covered maintenance, repair, and operating supplies in a variety of industries, such as iron and steel, machinery, chemicals, power equipment, and leather. This project embraced the activities of 920 business enterprises in 41 States and the District of Columbia and included brokers and distributors as well as manufacturers.

As of June 30, 1951, NPA had allocated to the Commission for this survey work a net total of \$150,000, of which \$146,544 had been obligated.

ECONOMIC REPORTING

The Commission's regular function of making public reports upon economic investigations (p. 16) has become more important because of the defense emergency. For the first time in its history, according to spokesmen for the defense agencies, the nation contemplates maintaining a continuous military and industrial mobilization for at least a decade and possibly for a generation. History presents no case in which a commonwealth thus mobilized for so long a period has preserved the essentials of free private enterprise. Under these circumstances, the Commission's reporting and recommendatory function takes on added significance as a means of identifying the problems confronting free private enterprise during the defense emergency and suggesting ways in which these problems can be resolved.

In addition to reports which it may make under the Defense Production Act, the economic and financial reports which the Commission

develops under section 6 of the Federal Trade Commission Act are of use not only to the Congress but also to other Government agencies, including the defense agencies, and to the general public. In the recent exercise of its reporting powers, the Commission has concentrated its attention upon reports which enable it to inform Congress what is happening to competition and reports which furnish information needed by the emergency agencies.

One of the Commission's first tasks in assisting those having responsibilities for defense was the preparation of reports for the use of the Preparedness Subcommittee of the Committee on Armed Services of the Senate (the Lyndon Johnson Committee). At the request of this Committee, the Commission prepared brief reports, based upon information already available within the Government, designed to show the character and significance of business restrictions that affect the supply of strategic materials for which the United States is dependent upon foreign sources. Two such reports were transmitted to the Committee in the fiscal year, one covering the tin industry and the other the mercury industry.

Attention was also centered during the year on iron ore supplies, petroleum, and steel distribution.

Financial Reports

Important contributions to the information needed by emergency agencies are made through the Commission's financial reporting program.

This work has roots running back almost to the First World War. For a time after that war, the Commission reported the basic economic facts about certain key industries. In 1939 and in 1940, the Commission made reports covering the principal balance sheet and income statement data of American manufacturing corporations. This activity was discontinued during World War II after the Office of Price Administration instituted a similar program for use in establishing price controls and analyzing corporate profits. Upon liquidation of OPA, the function was returned to the Federal Trade Commission by Presidential order.

The Commission resumed the collection of financial operating statements from manufacturing corporations in the first quarter of the calendar year 1947. Since that date, in cooperation with the Securities and Exchange Commission, summaries of these financial reports have been published quarterly.

With the establishment of price controls in 1950, the new Office of Price Stabilization found information of this character essential to its operation. In accord with the President's policy of using established agencies where possible instead of creating duplication of func-

tions, OPS chose to rely upon the Commission's regularly collected financial statistics. In addition, the Commission supplied to OPS during the fiscal year a series of special tabulations giving more detail than the regular reports and covering industries more narrowly defined. The method of reporting manufacturing profits was revised, partly for the purpose of making the reports more suited to the needs of the price control agency. Among other things, plans were laid to collect for the first time separate figures on certain important elements of the cost of goods sold, such as labor and materials.

Meanwhile, OPS felt the need for profit information about wholesaling and retailing as well as manufacturing. Accordingly, the Commission's financial reporting program was expanded in the first quarter of the calendar year 1951 to include wholesale and retail trade corporations. As the fiscal year closed, the Commission was assembling, on a sampling basis, financial data from 6,000 wholesale trade corporations and 8,000 retail trade corporations. To minimize costly response problems with many of the retail trade corporations engaged primarily in intrastate commerce, the Director of Price Stabilization delegated to the Commission his authority to require such reports in order to supplement the Commission's authority which applies only to corporations engaged in interstate commerce.

The results of this sampling operation are to be published quarterly. At the same time, the basic data are used, as requested by OPS, for special studies of narrowly defined industries which are components of the major industries shown in the published report.

In addition to the reports on wholesale and retail trade, OPS has been furnished with numerous tabulations and special studies based on the 4 years of data about manufacturing corporations previously collected by the Commission. These special studies were reports on specific industries such as machine tools, footwear, steel works and rolling mills, paper and paperboard mills, and petroleum refining. They have been used also by other defense agencies and have been requested in substantial number by others having direct interest in the mobilization program.

These profit reports are of use not only in price control but also in the development of military procurement and contract renegotiation policies and in connection with the work of the Treasury Department on excess profits taxes. They have general usefulness to any agency which needs to ascertain average rates of profits for different kinds of business at different periods of time.

Funds were allocated to the Commission by OPS for this financial reporting work, of which \$91,214 had been obligated as of June 30, 1951.

SAFEGUARDING THE PUBLIC INTEREST

When the Nation's effort is being mobilized for defense, monopolistic and deceptive practices detrimental to that program are more undesirable than ever. During such a period, the public interest requires special safeguards. These safeguards are available through the Commission's regular function of law enforcement.

Thus, in its legal case work, the Commission continues to move against such practices as price-fixing conspiracies, unlawful discriminations, competition-stifling tying contracts, and monopolistic mergers, not only because they are unlawful and need to be checked, but also because they are drags on the defense effort which should be tolerated today less than ever. Special emphasis is being placed on preserving the competitive private enterprise system from the deflecting tendencies inherent in the vast mobilization for defense. The Commission has alerted its staff to the danger that the mobilization program may accelerate existing tendencies toward concentration of economic power and, in the words of the President, "thereby imperil the very system we are seeking to protect." It is on guard against unfair and oppressive practices that exploit shortages of materials. It seeks to prevent dominant firms from preempting sources of supply and from using tying arrangements requiring buyers to take unwanted goods in order to obtain those that are scarce.

Similarly, the consuming public is needful of special protection during the defense emergency. The Commission has undertaken to prevent exploitation of consumers by business opportunists. It recognizes that when there are shortages in essential materials, and substitutes must be used, the necessity for truth in advertising becomes greater than when first-quality materials are in full supply. This is particularly true of clothing, medicinal preparations, home necessities, and other consumer articles. During the fiscal year, for example, a marked increase was shown in the number of formal proceedings required to enforce compliance with the Wool Products Labeling Act.

Shortages of physicians and other factors lead to an inevitable increase in self-medication. In these circumstances, the Commission is keenly aware of its duty to check the deceptive claims made for dangerous drugs, ineffective remedies, and fake nostrums. Not only is this called for to preserve the public health; it is also required to protect the consumer's pocketbook.

9

Appropriations and Obligations

THE GENERAL APPROPRIATION ACT, 1951 (Pub. 759, 81st Cong.), approved September 6, 1950, provided funds for the fiscal year 1951 for the Federal Trade Commission as follows:

Federal Trade Commission

Salaries and expenses.—For necessary expenses, including personal services in the District of Columbia; purchase of one passenger motor vehicle; health service program as authorized by law (5 U. S. C. 150); payment of tort claims pursuant to law (28 U. S. C. 2672); contract stenographic reporting services; and printing and binding; and not to exceed \$700 for newspapers; \$3,891,695, of which not less than \$223,473 shall be available for trade practice agreement work: Provided, That no part of the funds appropriated herein for the Federal Trade Commission shall be expended upon any investigation hereafter provided by concurrent resolution of the Congress until funds are appropriated subsequently to the enactment of such resolution to finance the cost of such investigation.

FUNDS AVAILABLE FOR FISCAL YEAR

Funds appropriated to the Commission for the fiscal year 1951 as cited above amounted to \$3,891,695. In addition, the Commission received by transfer the following amounts: from the Economic Stabilization Agency the sum of \$95,000 to cover the cost of the expansion of the current quarterly industrial financial report series; and from the National Production Authority the sum of \$150,000 to cover the cost of conducting surveys, inquiries, and investigations for the purpose of determining the facts concerning the operation of, and the degree of compliance with, the orders and regulations issued by the National Production Authority.

OBLIGATIONS BY ACTIVITIES, FISCAL YEAR 1951

1. Antimonopoly:

Legal case work	\$1,298,713
Economic and financial reports	292,615
Export trade	53,062

2. Antideceptive Practices:	
Legal case work -----	\$1,221,302
Trade practice conferences -----	236,600
Wool Act administration -----	309,362
Trade marks and insurance -----	33,875
3. Administrative salaries -----	326,439
Total -----	3,771,968

OBLIGATIONS BY OBJECTS, FISCAL YEAR 1951

Personal services -----	\$3,389,188
Travel -----	157,380
Transportation of things -----	779
Communication services -----	20,971
Rents and utility services -----	10,005
Printing and reproduction -----	56,491
Other contractual services -----	42,710
Supplies and materials -----	50,305
Equipment -----	43,924
Refunds, awards, and indemnities -----	215
Total -----	3,771,968

APPROPRIATIONS AND OBLIGATIONS, 1915—51

Appropriations available to the Commission since its organization and obligations for the same period, together with the unobligated balances, are shown in the table below. The table also lists the number of employees as of June 30 of each year.

Year	Number of employees	Nature of appropriations	Appropriations	Obligations	Balance
1915	143	Lump sum -----	\$184,016.23	\$90,442.05	\$93,574.18
		Printing and binding -----	12,386.76	9,504.16	2,882.60
1916	224	Lump sum -----	430,964.08	379,927.41	51,036.67
		Printing and binding -----	15,000.00	14,997.55	2.45
1917	193	Lump sum -----	542,025.92	448,890.66	93,135.26
		Printing and binding -----	25,000.00	23,610.54	1,389.46
1918	689	Lump sum -----	1,578,865.92	1,412,280.19	166,585.73
		Printing and binding -----	30,000.00	11,114.06	18,885.94
1919	367	Lump sum -----	1,693,622.18	1,491,637.39	201,984.97
		Printing and binding -----	14,934.21	14,934.21	0
1920	418	Lump sum -----	1,206,587.42	1,007,593.30	198,994.12
		Printing and binding -----	23,348.97	28,348.97	0
1921	315	Lump sum -----	938,609.94	842,991.24	95,618.70
		Printing and binding -----	37,182.56	37,182.56	0
1922	318	Lump sum -----	952,505.45	878,120.24	74,385.21
		Printing and binding -----	22,801.73	22,801.73	0
1923	308	Lump sum -----	952,020.11	948,293.07	3,727.04
		Printing and binding -----	22,460.21	22,460.21	0
1924	314	Lump sum -----	990,000.00	960,020.93	29,979.07
		Printing and binding -----	20,000.00	19,419.25	580.75
1925	314	Lump sum -----	990,000.00	988,082.37	1,917.63
		Printing and binding -----	20,000.00	19,866.14	133.86
1926	317	Lump sum -----	990,000.00	976,957.02	13,042.98
		Printing and binding -----	18,000.00	18,000.00	0
1927	293	Lump sum -----	980,000.00	943,881.99	36,118.01
		Printing and binding -----	17,000.00	17,000.00	0
1928	349	Lump sum -----	967,850.00	951,965.15	15,884.85
		Printing and binding -----	16,500.00	16,500.00	0

Year	Number of employees	Nature of appropriations	Appropriations	Obligations	Balance
1929	380	Lump sum -----	\$1,135,414.83	\$1,131,521.47	\$3,893.36
		Printing and binding -----	27,777.69	27,777.69	0
1930	450	Lump sum -----	1,440,971.82	1,430,084.17	10,887.65
		Printing and binding -----	35,363.58	35,363.58	0
1931	546	Lump sum -----	1,932,857.81	1,808,403.35	124,454.46
		Printing and binding -----	39,858.73	39,858.73	0
1932	511	Lump sum -----	1,808,097.19	1,749,484.60	58,612.59
		Printing and binding -----	30,000.00	30,000.00	0
1933	404	Lump sum -----	1,421,714.70	1,378,973.14	42,741.56
		Printing and binding -----	30,000.00	20,000.00	10,000.00
1934	584	Lump sum -----	1,273,763.49	1,273,606.38	157.11
		Printing and binding -----	40,250.00	40,250.00	0
1935	535	Lump sum -----	2,063,398.01	1,922,313.34	141,084.67
		Printing and binding -----	34,000.00	34,000.00	0
1936	571	Lump sum -----	1,998,665.58	1,788,729.76	209,935.82
		Printing and binding -----	36,800.00	32,996.05	3,803.95
1937	577	Lump sum -----	1,895,571.94	1,850,673.82	44,898.12
		Printing and binding -----	43,353.95	43,353.95	0
1938	585	Lump sum -----	1,950,000.00	1,895,519.47	54,480.35
		Printing and binding -----	46,000.00	46,000.00	0
1939	687	Lump sum -----	2,236,795.00	2,150,474.40	86,320.60
		Printing and binding -----	46,700.00	46,700.00	0
1940	668	Lump sum -----	2,285,500.00	2,214,889.07	70,610.93
		Printing and binding -----	60,000.00	60,000.00	0
1941	694	Lump sum -----	2,240,000.00	2,167,256.24	72,743.76
		Printing and binding -----	60,000.00	59,000.00	1,000.00
1942	631	Lump sum -----	2,373,822.00	2,296,921.13	76,900.87
		Printing and binding -----	60,000.00	42,000.00	18,000.00
1943	487	Lump sum -----	2,237,705.00	2,100,783.09	136,921.91
		Printing and binding -----	50,250.00	32,210.75	18,039.25
1944	463	Lump sum -----	2,040,050.00	1,917,307.50	122,742.50
		Printing and binding -----	43,000.00	39,848.247	3,151.55
1945	451	Lump sum -----	2,016,070.00	1,957,818.31	58,251.69
		Printing and binding -----	43,000.00	39,728.72	3,271.23
1946	496	Lump sum -----	2,129,833.00	2,118,404.77	11,428.28
		Printing and binding -----	44,000.00	33,044.88	10,955.12
1947	604	Lump sum -----	2,925,120.00	2,826,817.64	98,302.36
		Printing and binding -----	50,000.00	33,902.35	16,097.65
1948	579	Lump sum -----	2,915,596.92	2,894,685.60	20,911.32
		Printing and binding -----	55,000.00	53,815.34	1,184.66
1949	660	Lump sum -----	3,574,510.00	3,548,657.21	25,852.79
		Printing and binding -----	46,525.00	33,310.54	13,214.46
1950	654	Lump sum (including printing and binding) -----	3,723,000.00	3,722,072.45	927.55
1951	684	Lump sum (including printing and binding) -----	3,891,695.00	3,771,968.02	119,726.98

APPENDIXES

Federal Trade Commissioners 1915-51

Name	State from which appointed	Period of service
Joseph E. Davies	Wisconsin	Mar. 16, 1915—Mar. 18, 1918.
Edward N. Hurley	Illinois	Mar. 16, 1915—Jan. 31, 1917.
William J. Harris	Georgia	Mar. 16, 1915—May 31, 1918.
Will H. Parry	Washington	Mar. 16, 1915—Apr. 21, 1917.
George Rublee	New Hampshire	Mar. 16, 1915—May 14, 1916.
William B. Colver	Minnesota	Mar. 16, 1917—Sept. 25, 1920.
John Franklin Fort	New Jersey	Mar. 16, 1917—Nov. 30, 1919.
Victor Murdock	Kansas	Sept. 4, 1917—Jan. 31, 1924.
Huston Thompson	Colorado	Jan. 17, 1919—Sept. 25, 1926.
Nelson B. Gaskill	New Jersey	Feb. 1, 1920—Feb. 24, 1925.
John Garland Pollard	Virginia	Mar. 6, 1920—Sept. 25, 1921.
John F. Nugent	Idaho	Jan. 15, 1921—Sept. 25, 1927.
Vernon W. Van Fleet	Indiana	June 26, 1922—July 31, 1926.
Charles W. Hunt	Iowa	June 16, 1924—Sept. 25, 1932.
William E. Humphrey	Washington	Feb. 25, 1925—Oct. 7, 1933.
Abram F. Myers	Iowa	Aug. 2, 1926—Jan. 15, 1929.
Edgar A. McCulloch	Arkansas	Feb. 11, 1927—Jan. 23, 1933.
Garland S. Ferguson	North Carolina	Nov. 14, 1927—Nov. 15, 1949.
Charles H. March	Minnesota	Feb. 1, 1929—Aug. 28, 1945.
Ewin L. Davis	Tennessee	May 26, 1933—Oct. 23, 1949.
Raymond B. Stevens	New Hampshire	June 26, 1933—Sept. 25, 1933.
James M. Landis	Massachusetts	Oct. 10, 1933—June 30, 1934.
George C. Mathews	Wisconsin	Oct. 27, 1933—June 30, 1934.
William A. Ayres	Kansas	Aug. 23, 1934-.
Robert E. Freer	Ohio	Aug. 27, 1935—Dec. 31, 1948.
Lowell B. Mason	Illinois	Oct. 15, 1945-.
John Carson	Michigan	Sept. 28, 1949-.
James M. Mead	New York	Nov. 16, 1949-.
Stephen J. Spingarn	New York	Oct. 25, 1950-.

Federal Trade Commission Act

(15 U. S. C., Secs. 41-58)

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes

SEC. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the Commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed: Provided, however, that upon the expiration of his term of office a commissioner shall continue to serve until his successor shall have been appointed and shall have qualified. The Commission shall choose a chairman from its own membership.¹ No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the Commission shall not impair the right of the remaining commissioners to exercise all the powers of the Commission.

The Commission shall have an official seal, which shall be judicially noticed.

SEC. 2. That each commissioner shall receive a salary of \$10,000 a year,² payable in the same manner as the salaries of the Judges of the courts of the United States. The Commission shall appoint a secretary who shall receive a salary of \$5,000 a year,³ payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time be appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the Commission may from time to time find necessary for the conduct of its work, all employees of the commission shall

¹ Under Reorganization Plan No. 8 of 1950, which became effective May 24, 1950, pursuant to the Reorganization Act of 1949, the power to appoint the chairman was transferred to the President. The plan also transferred to the chairman, subject to specified limitations, the executive and administrative functions formerly exercised by the Commission as a whole.

² The salaries of the commissioners were increased to \$15,000 a year under the provisions of Public Law 359, 81st Cong., approved October 15, 1949.

³ The salary of the secretary is controlled by the provisions of the Classification Act of 1923, approved March 4, 1923, 42 Stat. 1488.

be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the Commission and by the Civil Service Commission.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the Commission.⁴

SEC. 3. That upon the organization of the Commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the Commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the Commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the Commission in the exercise of the powers, authority, and duties conferred on it by this Act.

The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

SEC. 4. The words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" includes all documents, papers, correspondence, books of account, and financial and corporate records.

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto and the Communications Act of 1934 and all Acts amendatory thereof and supplementary thereto.

⁴Auditing of accounts was made a duty of the General Accounting Office by the Act of June 10, 1921, 42 Stat. 24.

"Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; also sections 73 to 77, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894; also the Act entitled "An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February 12, 1913; and also the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

SEC. 5. (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers, subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938,⁵ and persons, partnerships, or corporations subject to the Packers and Stockyards Act, 1921, except as provided in section 406 (b) of said Act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

(b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the transcript of the record in the proceeding has been filed in a circuit court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside,

⁵ By subsection (f), Section 1107 of the "Civil Aeronautics Act of 1938," approved June 23, 1938, Public No. 706, 75th Congress, Ch. 601, 3d Sess., S. 3845, 52 Stat. 1028, Section 5 (a) of the Federal Trade Commission Act was amended by inserting before the words "and persons" (and following the words "to regulate commerce"), the following: "air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938."

in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require: Provided, however, That the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate circuit court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days⁶ from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commission. Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

(d) The Jurisdiction of the circuit court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the Commission or judgment of court to enforce the same shall in anywise re-

⁶ Section 5 (a) of the amending Act of 1938 provides:

SEC. 5. (a) In case of an order by the Federal Trade Commission to cease and desist, served on or before the date of enactment of this Act, the sixty-day period referred to in section 5 (C) of the Federal Trade Commission Act, as amended by this Act, shall begin on the date of the enactment of this Act.

lieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

(f) Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

(g) An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

(2) Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed, or the petition for review dismissed by the circuit court of appeals, and no petition for certiorari has been duly filed; or

(3) Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the circuit court of appeals; or

(4) Upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed.

(h) If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(i) If the order of the Commission is modified or set aside by the circuit court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the circuit court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(j) If the Supreme Court orders a rehearing; or if the case is remanded by the circuit court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission has been rendered.

(k) As used in this section the term "mandate," in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(1) Any person, partnership, or corporation who violates an order to the Commission to cease and desist after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the Commission each day of continuance of such failure or neglect shall be deemed a separate offense.⁷

SEC. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation and the report shall be made public in the discretion of the commission.

(d) Upon the direction of the President or either⁸ House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

⁷This sentence added by sec. 4 (c) of Public Law 459, 81st Cong., approved March 26, 1950, and effective July 1, 1950.

⁸The Independent Offices Appropriation Act of 1934 provided that future investigations by the Commission for Congress must be authorized by concurrent resolution of the two Houses. Under the Appropriation Act of 1951, funds appropriated for the Commission are not to be spent upon any investigation thereafter called for by congressional concurrent resolution "until funds are appropriated subsequently to the enactment of such resolution to finance the cost of such investigation."

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have

jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it; Provided, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000 or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the

same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

SEC. 12. (a) It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

(1) By United States mails, or in commerce by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce directly or indirectly, the purchase in commerce of food, drugs, devices, or cosmetics.

(b) The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in commerce within the meaning of section 5.

SEC. 13. (a) Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 12, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5, would be to the interest of the public,

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

(b) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—

(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement.

the court shall exclude such issue from the operation of the restraining order or injunction.

SEC 14.⁹ (a) Any person, partnership, or corporation who violates any provision of section 12 (a) shall, if the use of the commodity advertised may be injurious to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than \$10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: Provided, That for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act approved March 4, 1907, as amended, shall be conclusively presumed not injurious to health at the time the same leave official "establishments."

(b) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and postoffice address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement.

SEC. 15. For the purpose of sections 12, 13, and 14—

(a) (1) The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement or, under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only

⁹ Section 5 (b) of the amending Act of 1938 provides:

SEC. 5. (b) Section 14 of the Federal Trade Commission Act, added to such Act by section 4 of this Act, shall take effect on the expiration of sixty days after the date of the enactment of this Act.

to members of the medical profession, contains no false representations of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

(2)¹⁰ In the case of oleomargarine or margarine an advertisement shall be deemed misleading in a material respect if in such advertisement representations are made or suggested by statement, word, grade designation, design, device, symbol, sound, or any combination thereof, that such oleomargarine or margarine is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients contained in such oleomargarine or margarine.

(b) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(c) The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(d) The term "device" (except when used in subsection (a) of this section) means instruments, apparatus, and contrivances, including their parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

(e) The term "cosmetic" means (1) articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap.

(f) ¹⁰ For the purposes of this section and section 407 of the Federal Food, Drug, and Cosmetic Act, as amended, the term "oleomargarine" or "margarine" includes—

(1) all substances, mixtures, and compounds known as oleomargarine or margarine;

(2) all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk; fat if made in imitation or semblance of butter.

SEC. 16. Whenever the Federal Trade Commission has reason to believe that any person, partnership, or corporation is liable to a penalty under section 14 or under subsection (1) of section 5, it shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of such section or subsection.

SEC. 17. If any provision of this Act, or the application thereof to any person, partnership, corporation, or circumstance, is held invalid, the remainder of the Act and the application of such provision to any other person, partnership, corporation, or circumstance shall not be affected thereby.

¹⁰ This subsection added by sec. 4 (a) of Public Law 459, 81st Cong., approved March 26, 1950, and effective July 1, 1950.

SEC. 18. This Act may be cited as the "Federal Trade Commission Act."
Original act approved September 26, 1914.
Amended act approved March 21, 1938.

OTHER ACTS ADMINISTERED BY THE COMMISSION

In addition to the Federal Trade Commission Act, the Commission also administers section 2 of the Clayton Act (15 U. S. C., sec. 13), as amended by the Robinson-Patman Antidiscrimination Act, and sections 3, 7, and 8 of the Clayton Act (15 U. S. C., secs. 14, 18, and 19); the Export Trade Act (15 U. S. C., secs. 61-65); the Wool Products Labeling Act (15 U. S. C., sec. 68); and certain sections of the Trade-Mark Act of 1946 (15 U. S. C., secs. 1051-1072, 1091-1096, and 1111-1127).

Types of Unfair Methods and Practices

The following list illustrates unfair methods of competition and unfair or deceptive acts and practices condemned by the Commission from time to time in its orders to cease and desist. The list is not limited to orders issued during the fiscal year. Because of space limitation it does not include specific practices outlawed by the Clayton Act and committed to the Commission's jurisdiction, namely, various forms of price discrimination, exclusive-dealing and tying arrangements, competitive stock acquisition, and certain kinds of competitive interlocking directorates.

1. The use of false or misleading advertising concerning, and the misbranding of, commodities, respecting the materials or ingredients of which they are composed, their quality, purity, origin, source, attributes, or properties, or nature of manufacture, and selling them under such name and circumstances as to deceive the public. An important part of these include misrepresentation of the therapeutic and corrective properties of medicinal preparations and devices, and cosmetics, and the false representation, expressly or by failure to disclose their potential harmfulness, that such preparations may be safely used.

2. Describing various symptoms and falsely representing that they indicate the presence of diseases and abnormal conditions which the product advertised will cure or alleviate.

3. Representing products to have been made in the United States when the mechanism or movements, in whole or in important part, are of foreign origin.

4. Bribing buyers or other employees of customers and prospective customers, without employers' knowledge or consent, to obtain or hold patronage.

5. Procuring the business or trade secrets of competitors by espionage, or by bribing their employees, or by similar means.

6. Inducing employees of competitors to violate their contracts and enticing them away in such numbers or under such circumstances as to hamper or embarrass the competitors in the conduct of their business.

7. Making false and disparaging statements respecting competitors' products and business, in some cases under the guise of ostensibly disinterested and specially informed sources or through purported scientific, but in fact misleading, demonstrations or tests.

8. Widespread threats to the trade of suits for patent infringement arising from the sale by competitors of alleged infringing products, not in good faith, but for the purpose of intimidating the trade and hindering or stifling competition, and claiming, without justification, exclusive rights in public names of unpatented products.

9. Conspiring to maintain uniform selling prices, terms and conditions of sale through the use of a patent-licensing system.

10. Trade boycotts or combinations of traders to prevent certain wholesale or retail dealers or certain classes of such dealers from procuring goods at the same

terms accorded to the boycotters or conspirators, or through coercion to influence the trade policy of their competitors or of manufacturers from whom they buy.

11. Passing off goods for products of competitors through appropriation or simulation of such competitors' trade names, labels, dress of goods, or counterdisplay catalogs.

12. Selling rebuilt, second-hand, renovated, or old products, or articles made in whole or in part from used or second-hand materials, as new, by so representing them or by failing to reveal that they are not new or that second-hand materials have been used.

13. Buying up supplies for the purpose of hampering competitors and stifling or eliminating competition.

14. Using concealed subsidiaries, ostensibly independent, to obtain competitive business otherwise unavailable, and making use of false and misleading representations, schemes, and practices to obtain representatives and make contacts, such as pretended puzzle-prize contests purportedly offering opportunities to win handsome prizes, but which are in fact mere "come-on" schemes and devices in which the seller's true identity and interest are initially concealed.

15. Selling or distributing punchboards and other lottery devices which are to be or may be used in the sale of merchandise by lot or chance; using merchandising schemes based on lot or chance, or on a pretended contest of skill.

16. Combinations or agreements of competitors to fix, enhance, or depress prices, maintain prices, bring about substantial uniformity in prices, or divide territory or business, to cut off or interfere with competitors' sources of supply, or to close market to competitors; or use by trade associations of so-called standard cost system, price lists, or guides, or exchange of trade information calculated to bring about these ends, or otherwise restrain or hinder free competition.

17. Intimidation or coercion of producer or distributor to cause him to organize, join, or contribute to, or to prevent him from organizing, joining, or contributing to, producers' cooperative association or other association.

18. Aiding, assisting, or abetting unfair practice, misrepresentation, and deception, and furnishing means of instrumentalities therefor; and combining and conspiring to offer or sell products by chance or by deceptive methods, through such practices as supplying dealers with lottery devices, or selling to dealers and assisting them in conducting contest schemes as a part of which pretended credit slips or certificates are issued to contestants, when in fact the price of the goods has been marked up to absorb the face value of the credit slip; and the supplying of emblems or devices to conceal marks of country of origin of goods, or otherwise to misbrand goods as to country of origin.

19. Various methods to create the impression that the customer is being offered an opportunity to make purchases under unusually favorable conditions when such is not the case, such devices including—

(e) Sales plans in which the seller's usual price is falsely represented as a special reduced price for a limited time or to a limited class, or false claim of special terms, equipment, or other privileges or advantages.

(b) The use of the "free goods" or service device to create the impression that something is actually being thrown in without charge, when it is fully covered by the amount exacted in the transaction as a whole, or by services to be rendered by the recipient.

(c) Use of misleading trade names calculated to create the impression that a dealer is a producer or importer selling directly to the consumer, with resultant savings.

(d) Offering of false "bargains" by pretended cutting of a fictitious "regular" price.

(e) Use of false representations that an article offered has been rejected as nonstandard and is offered at an exceptionally favorable price, or that the number thereof that may be purchased is limited.

(f) Falsely representing that goods are not being offered as sales in ordinary course, but are specially priced and offered as a part of a special advertising campaign to obtain customers, or for some purpose other than the customary profit.

(g) Misrepresenting, or causing dealers to misrepresent, the interest rate of carrying charge on deferred payments.

20. Using containers ostensibly of the capacity customarily associated by the purchasing public with standard weights or quantities of the product therein contained, or using standard containers only partially filled to capacity, so as to make it appear to the purchaser that he is receiving the standard weight or quantity.

21. Misrepresenting in various ways the necessity or desirability or the advantages to the prospective customer of dealing with the seller, such as—

(a) Misrepresenting seller's alleged advantages of location or size, or the branches, domestic or foreign, or the dealer outlets he has.

(b) Making false claim of being the authorized distributor of some concern, or failing to disclose the termination of such relationship, in soliciting customers of such concern, or of being successor thereto or connected therewith, or of being the purchaser of competitor's business, or falsely representing that competitor's business has been discontinued, or falsely claiming the right to prospective customer's special consideration through such false statements as that the customer's friends or his employer have expressed a desire for, or special interest in, consummation of seller's transaction with the customer.

(c) Alleged connection of a concern, organization, association, or institute with, or endorsement of it or its product or services by, the Government or nationally known organization, or representation that the use of such product or services is required by the Government, or that failure to comply with such requirement is subject to penalty.

(d) False claim by a vendor of being an importer, or a technician, or a diagnostician, or a manufacturer, grower, or nurseryman, or a distiller, or of being a wholesaler, selling to the consumer at wholesale prices; or by a manufacturer of being also the manufacturer of the raw material entering into the product, or by an assembler of being a manufacturer.

(e) Falsely claiming to be a manufacturer's representative and outlet for surplus stock sold at a sacrifice.

(f) Falsely representing that the seller owns a laboratory in which the product offered is analyzed and tested.

(g) Representing that ordinary private commercial seller and business is an association, or national association, or connected therewith, or sponsored thereby, or is otherwise connected with noncommercial or professional organizations or associations, or constitutes an institute, or, in effect, that it is altruistic in purpose, giving work to the unemployed.

(h) Falsely claiming that business is bonded, or misrepresenting its age or history, or the demand established for its products, or the selection afforded, or the quality or comparative value of its goods, or the personnel or staff or personages presently or theretofore associated with such business or the products thereof.

(i) Claiming falsely or misleadingly patent, trade-mark, or other special and exclusive rights.

(j) Granting seals of approval by a magazine to products advertised therein and misrepresenting thereby that such products have been adequately tested, and misrepresenting by other means the quality, performance, and characteristics of such products.

22. Obtaining business through undertakings not carried out and not intended to be carried out, and through deceptive, dishonest, and oppressive devices calculated to entrap and coerce the customer or prospective customer, such practices including—

(a) misrepresenting that seller fills orders promptly, ships kind of merchandise described, and assigns exclusive territorial rights within definite trade areas to purchasers or prospective purchasers.

(b) Obtaining orders on the basis of samples displayed for customer's selection and failing or refusing to respect such selection thereafter in filing of orders, or promising results impossible of fulfillment, or falsely making promises or holding out guaranties, or the right of return, or results, or refunds, replacements, or reimbursements or special or additional advantages to the prospective purchasers such as extra credit, or furnishing of supplies or advisory assistance; or falsely assuring the purchaser or prospective purchaser that certain special or exclusively personal favors or advantages are being granted him.

(c) Concealing from prospective purchaser unusual features involved in purchaser's commitment, the result of which will be to require of purchaser further expenditure in order to obtain benefit of commitment and expenditure already made, such as failure to reveal peculiar or nonstandard shape of portrait or photographic enlargement, so as to make securing of frame therefor from sources other than seller difficult and impracticable, if not impossible.

(d) Obtaining by deceit prospective customer's signature to a contract and promissory note represented as simply an order on approval.

(e) Making use of improper and coercive practices as means of exacting additional commitments from purchasers, through such practices as unlawfully withholding from purchaser property of latter lent to seller incident to carrying out of original commitment, such as practice of declining to return original photograph from which enlargement has been made until purchaser has also entered into commitment for frame therefor.

(f) Falsely representing earnings or profits of agents, dealers, or purchasers, or the terms or conditions involved, such as false statement that participation by merchant in seller's sales promotion scheme is without cost to merchant, and that territory assigned an agent, representative, or distributor is new or exclusive.

(g) Obtaining agents or representatives to distribute the seller's products through falsely promising to refund the money paid by them should the product prove unsatisfactory, or promising that the agent would be granted right to exclusive or new territory, would be given assistance by seller, or would be given special credit or furnished supplies, or overstating the amount of his earnings or the opportunities which the employment offers.

(h) Advertising a price for a product as illustrated or described and not including in such price all charges for equipment or accessories illustrated or described or necessary for use of the product or customarily included as standard equipment, and failing to include all charges not specified as extra.

23. Giving products misleading names so as to give them a value to the purchasing public which they would not otherwise possess, such as names implying falsely that—

(a) The products were made for the Government or in accordance with its specifications and of corresponding quality, or that the advertiser is connected with the Government in some way, or in some way the products have been passed upon, inspected, underwritten, or endorsed by it; or

(b) They are composed in whole or in part of ingredients or materials which in fact are present only to a negligible extent or not at all, or that they have qualities or properties which they do not have; or

(c) They were made in or came from some locality famous for the quality of such products, or are of national reputation; or

(d) They were made by some well and favorably known process; or

(e) They have been inspected, passed, or approved after meeting the tests of some official organization charged with the duty of making such tests expertly and disinterestedly, or giving such approval; or

(f) They were made under conditions or circumstances considered of importance by a substantial part of the general purchasing public; or

(g) They were made in a country, or city, or locality considered of importance in connection with the public taste, preference, or prejudice; or

(h) They have the usual characteristics or value of a product properly so designated, as through use of a common, generic name, such as "paint," to designate a product lacking the necessary ingredients of paint;

(i) They are of greater value, durability, and desirability than is the fact, as labeling rabbit fur as "Beaver"; or

(j) They are designed, sponsored, produced, or approved by the medical profession, health and welfare associations, hospitals, celebrities, educational institutions and authorities, such as the use of letters "M. D." and the words "Red Cross" and its insignia and words "Boy Scout."

24. Selling below cost or giving products without charge, with intent and effect of hindering or suppressing competition.

25. Dealing unfairly and dishonestly with foreign purchasers and thereby discrediting American exporters generally.

26. Coercing and forcing uneconomic and monopolistic reciprocal dealing.

27. Entering into contracts in restraint of trade whereby foreign corporations agree not to export certain products to the United States in consideration of a domestic company's agreement not to export the same commodity, nor to sell to anyone other than those who agree not to so export the same.

28. Employing various false and misleading representations and practices attributing to products a standing, merit and value to the purchasing public, or a part thereof, which they do not possess, such practices including—

(a) Misrepresenting, through salesmen or otherwise, products' composition, nature, qualities, results accomplished, safety, value, and earnings or profits to be had therefrom.

(b) Falsely claiming unique status or advantages, or special merit therefor, on the basis of misleading and ill-founded demonstrations or scientific tests, or pretended widespread tests, or of pretended widespread and critical professional acceptance and use.

(c) Misrepresenting the history or circumstances involved in the making and offer of the products or the source or origin thereof (foreign or domestic), or of the ingredients entering therein, or parts thereof, or the opportunities brought to the buyer through purchase of the offering, or otherwise misrepresenting scientific or other facts bearing on the value thereof to the purchaser.

(d) Falsely representing products as legitimate, or prepared in accordance with Government or official standards or specifications.

(e) Falsely claiming Government or official or other acceptance, use, and endorsement of product, and misrepresenting success and standing thereof through use of false and misleading endorsements or false and misleading claims with respect thereto, or otherwise.

(f) Making use of a misleading trade name and representing by other means that the nature of a business is different than is the fact, such as a collection agency engaged in tracing alleged delinquent debtors representing itself to be a delivery system, an organization in search of missing heirs, or one connected with a Government agency.

(g) Misrepresenting fabrics or garments as to fiber content; and, in the case of wool products, failing to attach tags thereto indicating the wool, reused wool, reprocessed wool or other fibers contained therein, and the identity of the manufacturer or qualified reseller, as required by the Wool Products Labeling Act, or removing or mutilating tags required to be affixed to the products when they are offered for sale to the public.

29. Failing and refusing to deal justly and fairly with customers in consummating transactions undertaken through such practices as refusing to correct mistakes in filling orders or to make promised adjustments or refunds, and retaining, without refund, goods returned for exchange or adjustment, and enforcing, notwithstanding agents' alterations, printed terms of purchase contracts, and exacting payments in excess of customers' commitments.

30. Shipping products at market prices to customers or prospective customers or to the customers or prospective customers of competitors without an order and then inducing or attempting by various means to induce the consignees to accept and purchase such consignments.

31. Inducing the shipment and sale of commodities through buyer's issuance of fictitious price lists and other printed matter falsely representing rising market conditions and demand, and leading seller to ship under the belief that he would receive prices higher than the buyer intended to or did pay.

Description of Procedure

CASES before the Commission may originate in one of several ways: Through complaint by a consumer or a competitor; from other governmental agencies, Federal, State, or municipal; or upon observation by the Commission. The Commission itself may initiate an investigation to determine whether the laws administered by it are being violated. No formality is required in making application for complaint. A letter setting forth the facts in detail is sufficient, but it should be accompanied by all evidence in possession of the complaining party in support of the charges made. It is the policy of the Commission not to disclose the identity of the complainant.

Upon receipt of an application for complaint, the Commission through its Bureau of Antimonopoly or its Bureau of Antideceptive Practices, considers the essential jurisdictional elements before deciding whether it shall be docketed for investigation. If it is a case involving restraint of trade or alleged violation of the Clayton Antitrust Act, it is assigned to the Chief, Division of Investigation and Litigation, Bureau of Antimonopoly. Other types of cases, including those involving deceptive practices, are referred in the Bureau of Antideceptive Practices to the Chief, Division of Investigation.

In either Bureau, after preliminary processing, cases are then assigned to attorney-examiners for the purpose of developing all the essential facts. In matters requiring field investigation, the general procedure is to interview the party complained against, advise him of the charges, and request such information as he may care to furnish in defense or in justification. Where necessary, competitors of the respondent are interviewed to determine the effect of the practice from a competitive standpoint. It is often desirable also to interview consumers and members of the general public to obtain their assistance in determining whether the practice in question constitutes an unfair method of competition or an unfair or deceptive practice, as well as to establish the existence of the requisite public interest.

After developing all the facts, the examining attorney files a report summarizing the evidence, reviewing the applicable law, and recommending the action he believes the Commission should take. The record is then reviewed by his division chief, who submits the file to the Commission through the Bureau Director, accompanied by a statement setting forth the facts as well as his conclusions and recommendations.

Recommendations thus made to the Commission may be for (1) issuance of a formal complaint; (2) negotiation of a stipulation-agreement in which the respondent agrees to cease and desist from the practices challenged as unlawful; or (3) closing of the case. When issuance of a complaint is recommended, a draft of the complaint—prepared by the Division of Litigation in either the Bureau of Antimonopoly or the Bureau of Antideceptive Practices—accompanies the file.

If the Commission decides that a formal complaint should issue, the case is referred to the appropriate Division of Litigation for trial of the case. Should the Commission permit disposition by stipulation, the case is referred to the Division of Stipulations in the Bureau of Industry Cooperation.

All proceedings prior to issuance of a formal complaint or acceptance of a stipulation are confidential.

Formal complaints are issued by the Commission only after careful consideration of the facts developed by the investigation. The complaint and the answer of the respondent, together with subsequent proceedings, are matters of public record. Formal complaints are issued in the name of the Commission acting in the public interest. They name the respondents, allege a violation of law, and contain a statement of the charges. The party complaining to the Commission is not a party to the formal complaint, and the proceeding does not seek to adjust matters between parties. On the contrary, the purpose of a Commission proceeding is to prevent, for the protection of the public, those unfair methods of competition and unfair or deceptive practices forbidden by the Federal Trade Commission Act and those practices within the Commission's jurisdiction which are prohibited by the Clayton Antitrust Act; as amended by the Robinson-Patman Act; the Export Trade Act; and the Wool Products Labeling Act.

The Commission's rules of practice provide that a respondent desiring to contest the proceeding shall file answer admitting, denying, or explaining each allegation within 20 days from service of the complaint. In addition, any respondent is afforded an opportunity to submit offers of settlement where time, the nature of the proceeding, and the public interest permit.

Where evidence is to be taken in a contested case, the matter is set down for hearing before a trial examiner. Such hearings, with due regard to the convenience and necessity of all parties, may be held anywhere in the United States. The Commission's complaint is supported by one or more of its trial attorneys, and the respondent has the privilege of appearing in his own behalf or by attorney.

In these hearings, respondents have the right to present evidence and to cross-examine witnesses, as well as other rights fundamental to judicial proceedings. Counsel supporting the complaint has the general burden of proof.

After the submission of evidence in support of the complaint and in behalf of the respondent, and after the parties have otherwise been duly heard and their contentions considered, the trial examiner, within 30 days after closing the record, prepares and files an "initial decision." This decision becomes a Commission decision 30 days after service unless the parties appeal to the Commission or unless the Commission, on its own initiative, docket the case for review.

Filing of initial decisions by trial examiners is a procedure recently authorized by the Commission, pursuant to the Administrative Procedure Act. Formerly, trial examiners made "recommended decisions," with the "initial decision" being made by the Commission.

Initial decisions include a statement of findings and conclusions, with the reasons or bases therefor, upon all the material issues of fact, law, or discretion presented on the record, and an appropriate order. All findings, conclusions, and orders made and issued by the trial examiner must be based upon the whole record and supported by reliable, probative, and substantial evidence.

In the event a respondent or counsel supporting the complaint desires to appeal, a "notice of intention to appeal" must be filed within 10 days after service of the initial decision. An "appeal brief" must be filed within 30 days after service of the initial decision, with the brief of the party opposing appeal due within 20 days after service of the appeal brief. Oral argument may be heard by the Commission on request of either party.

On appeal or review, the Commission may exercise all the powers it would have exercised had it made the initial decision.

Under the Commission's rules, trial examiners are "charged with the duty of conducting a fair and impartial hearing" and may "perform no duties inconsistent with their duties and responsibilities as such." The rules specifically

provide that they "shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for the Commission."

If the allegations of the complaint are sustained by the evidence, the trial examiner (or the Commission on appeal or review) makes findings as to the facts and conclusions of law, and an order is then issued requiring the respondent to cease and desist from the practice found to be violative of law. If the complaint is dismissed or the case closed, an appropriate order is likewise entered.

Up to and including the issuance of an order to cease and desist there is no difference in procedure, whether the case is under the Federal Trade Commission Act, the Clayton Act, or the Wool Products Labeling Act, but the Clayton Act provides a procedure for enforcement of cease-and-desist orders different from that specified by the other two acts.

Under the Federal Trade Commission Act and the Wool Products Labeling Act, an order to cease and desist becomes final 60 days after date of service upon the respondent, unless within that period the respondent petitions an appropriate United States court of appeals to review the order. In case of review, the order of the Commission becomes final after affirmance by the court of appeals or by the Supreme Court of the United States, if taken to that court on certiorari. Violation of an order to cease and desist after it becomes final subjects the offender to suit by the Government in a United States district court for recovery of a civil penalty of not more than \$5,000 for each violation.

Under the Clayton Act, an order to cease and desist does not become final by lapse of time. The order must be affirmed by a United States court of appeals on application for review by the respondent or upon petition of the Commission for enforcement. Where affirmance is accompanied by a decree of enforcement, appropriate contempt proceedings may thereafter be brought in the particular court of appeals for violation of the order.

Under all three acts, the respondent may apply to a court of appeals for review of an order and the court has power to affirm, or affirm after modification, or to set aside the order. Upon such application by the respondent and crossapplication by the Commission, or upon application by the Commission for enforcement of an order under the Clayton Act, the court has power to enforce the order to the extent it is affirmed. In any event, either party may apply to the Supreme Court for review, by certiorari, of the action of the court of appeals.

In addition to the regular proceeding by way of complaint and order to cease and desist, the Commission may, in a proper case, bring suit in a United States district court to enjoin the dissemination of advertisements of food, drugs, cosmetics, and devices intended for use in the diagnosis, prevention, or treatment of disease, whenever it has reason to believe that such a proceeding would be to the interest of the public. These temporary injunctions remain in effect until an order to cease and desist has been issued and has become final, or until the Commission's complaint is dismissed by the Commission or set aside by the court on review.

Further, the dissemination of a false advertisement of a food, drug, device, or cosmetic, where the use of the commodity advertised may be injurious to health or where the act of disseminating is with intent to defraud or mislead, constitutes a misdemeanor; and conviction subjects the offender to a fine of not more than \$5,000, or imprisonment of not more than 6 months, or both. Succeeding convictions may result in a fine of not more than \$10,000, or imprisonment of not more than 1 year, or both. The statute provides that the Commission shall certify this type of case to the Attorney General for institution of appropriate court proceedings.

Rules of Practice¹

RULE I. THE COMMISSION

Offices.— The principal office of the Commission is at Washington, D. C.

All communications to the Commission must be addressed to Federal Trade Commission, Washington 25, D. C., unless otherwise specifically directed.

Branch Offices are maintained at New York, Chicago, San Francisco, Seattle, and New Orleans.

Their addresses are: Federal Trade Commission, Room 501, 45 Broadway, New York 6, N. Y.; Federal Trade Commission, Room 1500, 173 West Madison Street, Chicago 2, Ill.; Federal Trade Commission, Federal Office Building, Room 133, Civic Center, San Francisco 2, Calif.; Federal Trade Commission, 811 U. S. Courthouse, Seattle 4, Wash.; Federal Trade Commission, 413 Masonic Temple Building, 333 St. Charles Street, New Orleans 12, La.

Hours.—Offices are open on each business day from 8:30 a. m. to 5 p. m.

Sessions.—The Commission may meet and exercise all its powers at any place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sessions of the Commission for hearings will be held as ordered by the Commission.

Sessions of the Commission for the purpose of making orders and for transaction of other business unless otherwise ordered will be held at the principal office of the Commission at Pennsylvania Avenue and Sixth Street, Washington, D. C., on each business day at 10 a. m.

Quorum.— A majority of the members of the Commission shall constitute a quorum for the transaction of business.

Public information.—All requests, whether for information or otherwise, and submittals shall be addressed to the principal office of the Commission.

RULE II. THE SECRETARY

The Secretary is the executive officer of the Commission and shall have the legal custody of its seal, papers, records, and property; and all orders of the Commission shall be signed by the Secretary or such other person as may be authorized by the Commission.

RULE III. INVESTIGATIONAL PROCEDURES

(a) Investigations.—In any matter under investigation the Commission may invoke any or all of the compulsory processes authorized by law, including those stated in subsection (2) of section C of Rule XXX. Any party required in any manner to respond to such processes shall be given actual notice of the purpose of the investigation.

¹ The rules of practice are published as last amended on June 26, 1951.

(b) Investigational hearings.— Investigational hearings as distinguished from hearings in formal adversary proceedings shall be held before the Commission, one or more of its members, or a duly designated representative, for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to one or more of the subjects under investigation. Unless otherwise ordered by the Commission, such hearings shall be nonpublic investigatory proceedings and shall be stenographically reported, and a transcript thereof shall be made a part of the record of the investigation.

(c) Rights of witnesses.—The provisions of subsection (3) of section C of Rule XXX shall be applicable to proceedings under (a) and (b) above.

RULE IV. APPLICATIONS FOR COMPLAINT

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Such application for complaint shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

RULE V. COMPLAINTS, DEFAULTS, CONSENT SETTLEMENTS

(a) Complaints.—Whenever the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, and in case of violation of the Federal Trade Commission Act, if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission shall issue and serve upon the proper parties a complaint stating its charges and containing a notice of a hearing upon a day and at the place therein fixed, at least thirty (30) days after the service of said complaint.

(b) Defaults.— In the "Notice" portion of the complaint there may be set forth a provisional order to cease and desist which the Commission shall have reason to believe should issue if the facts in the record shall be found to be as alleged in the complaint. If the complaint contains such order, it shall also state that such order shall issue, unless the respondent shall file an answer within the time designated in the complaint; shall appear at the time and place so fixed; and shall show cause why the said order to cease and desist should not be entered by the Commission, in which event such provisional order to cease and desist shall be without effect.

(c) Consent settlements.— At any time after the issuance of complaint and prior to the commencement of the taking of evidence, all respondents in any case may jointly move the trial examiner to suspend proceedings before him for a reasonable time to permit negotiations by counsel upon a consent settlement dispositive of the proceeding. Such suspension, and the time thereof, will be in the discretion of the trial examiner, after considering representations of counsel for both sides and the reasonable probability of an agreement being reached that would result in a substantial saving in time and expense.

(d) In the event a consent settlement is agreed upon by counsel, it shall be submitted to the Commission through the trial examiner, who shall transmit with such proposal any comment thereon he may deem appropriate and the record in the proceeding in which the settlement is tendered. In the event the proposal is rejected by the Commission, the case will be returned to the

trial examiner to proceed in regular course and the proposal will not become a part of the record. In the event a consent settlement is accepted, the case will be concluded by the entry therein by the Commission of the order and other matters included in such settlement in accordance with its terms.

(e) Every consent settlement shall dispose of the entire proceeding as to all parties and shall include, in addition to the order to cease and desist, admission of jurisdictional facts and also a statement of the acts and practices which the Commission had reason to believe were unlawful; but a respondent need not admit, though he may not deny, any of the matters contained in such statement. A consent settlement will not be accepted unless each respondent consents to the entry of the admitted jurisdictional facts and the said statement of acts and practices as the findings as to the facts of the Commission, and to the entry of the order to cease and desist.

(f) Pursuant to a change of law or facts, or when the public interest so requires, a consent settlement may be altered, modified, or set aside in whole or in part upon consent of all parties. All consent settlements shall contain an agreement that if consent to a change desired is not obtained, the Commission or any respondent may file a motion in the case to set aside such consent settlement in whole or in part on the grounds of change of law or fact or that the public interest so requires; and after opportunity for hearing upon the issues formed, the Commission may, if it finds that a change of law or fact, or the public interest so requires, set aside the consent settlement or any part thereof which is separable from the remaining provisions without changing their effect. Thereafter, the Commission may, by adversary proceedings pursuant to the original complaint, or a new or amended and supplemental complaint, undertake corrective action as to any acts or practices not prohibited by any remaining provisions of the consent settlement.

RULE VI. SERVICE

Complaints, orders, and other processes of the Commission, and briefs in support of the complaint, will be served by the secretary of the Commission by registered mail, except when service by other method shall be specifically ordered by the Commission, by registering and mailing a copy thereof addressed to the person, partnership, or corporation to be served at his or its principal office or place of business. When proceeding under the Federal Trade Commission Act service may also be made at the residence of the person, partnership, or corporation to be served.

When service is not accomplished by registered mail, complaints, orders, or other processes of the Commission, and briefs in support of the complaint, may be served by anyone duly authorized by the Commission, or by any examiner of the Commission,

(a) By delivering a copy of the document to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or

(b) By leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation. When proceeding under the Federal Trade Commission Act service may also be made at the residence of the person, partnership, or corporation to be served.

The return post-office receipt for said complaint, order, or other process or brief registered and mailed as aforesaid, or the verified return by the person serving such complaint, order, or other process or brief, setting forth the manner of said service, shall be proof of the service of the document.

RULE VII. APPEARANCE

Any individual or member of a partnership which is a party to any proceeding before the Commission may appear for himself, or such partnership upon adequate identification, and a corporation or association may be represented by a bona fide officer of such corporation or association upon a showing of adequate authorization therefor.

A party may also appear by an attorney at law possessing the requisite qualifications, as hereinafter set forth, to practice before the Commission.

Attorneys at law, who are admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States, or the United States Court of Appeals for the District of Columbia, or the District Court of the United States for the District of Columbia, may practice before the Commission.

No register of attorneys who may practice before the Commission is maintained. No application for admission to practice before the Commission is required. A written notice of appearance on behalf of a specific party or parties in the particular proceeding should be submitted by attorneys desiring to appear for such specific party or parties, which notice shall contain a statement that the attorney is eligible under the provisions of this rule. Any attorney practicing before the Commission or desiring so to practice may, for good cause shown, be disbarred or suspended from practicing before the Commission, but only after he has been afforded an opportunity to be heard in the matter.

No former officer, examiner, attorney, clerk, or other former employee of this Commission shall appear as attorney or counsel for or represent any party in any proceeding resulting from any investigation, the files of which came to the personal attention of such former officer, examiner, attorney, clerk, or other former employee during the term of his service or employment with the Commission.

RULE VIII. ANSWERS

(a) In case of desire to contest the proceeding the respondent shall, within 20 days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

Ten copies of answers shall be furnished. The original of all answers shall be signed in ink, by the respondent or by his attorney at law. Corporations or associations shall file answers through a bona fide officer or by an attorney at law. Answers shall show the office and post office address of the signer.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and findings as to the facts and conclusions based upon such answer shall be made and order entered disposing of the matter without any intervening procedure. The respondent may, however, reserve in such answer the right to submit proposed findings and conclusions of fact or of law under rule XXI, and the right to appeal under rule XXIII.

The trial examiner may, at any time the case is pending before him, at the request or with the consent of the parties, hold a conference or conferences for the settlement or simplification of the issues in the proceeding.

(b) Failure to file an answer or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(c) Admission in the answer, or admission by failure to file an answer, of all the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission, the trial examiner and the Commission shall be deemed authorized, without further notice to respondent, to find the facts, to draw conclusions therefrom, and to enter an appropriate order.

RULE IX. INTERVENTION

So far as the responsible conduct of public business shall permit, any interested person, after leave granted, may appear before the Commission, or its delegated responsible officer, for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding or in connection with any function of the Commission.

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested.

The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem proper.

RULE X. MOTIONS

During the time a proceeding is pending before a trial examiner all motions therein, except as provided in Rules XV (d), XVI, and XIX, shall be addressed to and ruled upon by him, and no interlocutory appeals to the Commission from such rulings shall be allowed except as provided in Rules XIV, XVI, and XX.

When a motion to dismiss is granted as to all charges of the complaint in regard to one or more respondents, or is granted as to any part of such charges in regard to any or all respondents, the trial examiner shall forthwith render, in accordance with the appropriate provisions of Rules XXI, XXII, and XXIII, an initial decision dismissing the complaint as to such charges or such respondents. An appeal from such decision may be taken in accordance with Rule XXIII.

All motions subsequent to the filing of the initial decision shall be addressed to and ruled upon by the Commission. Ten (10) copies of all motions shall be filed.

RULE XI. TIME

(a) Computation.— In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or legal holiday; in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(b) Continuances and extension of time.—For good cause shown, the trial examiner may, as to all matters pending before him, extend any time limit prescribed in these rules, except that governing the submission of his initial decision. Except as otherwise expressly provided by law, the Commission, for good cause shown, may extend any time limit prescribed in these rules with respect to matters pending before it. Application for an extension shall be made prior to the expiration of the time which it is desired to extend.

(c) Regulation of time and place of hearing.—Initial hearing before a trial examiner shall begin at the time and place ordered by the Commission, unless a notice of a change of such time and place is issued by the trial examiner, who shall regulate the course of hearings subject to the provisions of Rule XX.

RULE XII. DOCUMENTS

Filing.—All documents required to be filed in any proceeding, whether pending before a trial examiner or before the Commission, shall be filed with the Secretary of the Commission.

Title.— Documents shall clearly show the docket number and title of the proceeding.

Copies.— Documents, other than correspondence, shall be filed in triplicate, except as otherwise specifically required by these rules.

Form.— Documents not printed shall be typewritten, on one side of paper only; letter size, eight (8) inches by ten and one-half (10½) inches; left margin, one and one half (1½) inches; right margin, one (1) inch.

Documents may be printed, in ten (10) or twelve (12) point type, on good, unglazed paper, of the dimensions and with the margins above specified.

Documents shall be bound at left side only.

The originals of all answers, briefs, motions, and other documents shall be signed in ink, by the respondent or his duly authorized attorney. Where the respondent is an individual or a partnership, the originals of said documents shall be signed by said individual or by one of the partners, or by his or its attorney. Where the respondent is a corporation, the originals of said documents shall be signed under the corporate name by a duly authorized official of such corporation, or by its attorney. Where the respondent is an association, the originals of said documents shall be signed under the association name for said association by a duly authorized official of such association, or by its attorney.

One copy of a brief or other document required to be printed shall be signed as the original.

RULE XIII. ADMISSION AS TO FACTS AND DOCUMENTS

At any time after answer has been filed counsel or parties in any controversy may serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request or the admission of the truth of any relevant matters of fact set forth in such documents.

Copies of the documents shall be delivered with the request unless copies have already been furnished. Each of the matters on which an admission is so requested shall be deemed admitted unless, within a period designated within the request, not less than ten days after service thereof or within such further time as the Commission or the trial examiner may allow on motion and notice, the party so served serves upon the party making the request, a sworn statement either denying specifically the matters of which an admission is requested, or setting forth in detail the reasons why he can neither truthfully admit nor deny those matters. Service required hereunder may be made upon a respondent either by registering and mailing or by delivering a copy of the documents to be served to the respondent or his attorneys, or by leaving a copy at the principal office or place of business of either. Service upon the attorney supporting the complaint may be either by registering and mailing or by delivering a copy of the documents to be served to such attorney.

RULE XIV. TRIAL EXAMINERS

All hearings pursuant to formal complaints shall be presided over by the Commission, a member of the Commission, or by a trial examiner appointed by the Commission and duly qualified as an examiner or hearing officer within the meaning of the Administrative Procedure Act. So far as practicable trial examiners shall be assigned to cases in rotation.

Subject to the published rules of the Commission and within its authority, officers presiding at hearings shall have the following powers and duties in all cases to which they are assigned by the Commission, to wit:

- (1) To administer oaths and affirmations.
- (2) To issue subpoenas authorized by law.
- (3) To rule upon offers of proof and receive relevant evidence.
- (4) To take or cause depositions to be taken whenever the ends of justice would be served thereby.
- (5) To regulate the course of the hearings.
- (6) To hold conferences for the settlement or simplification of the issues by consent of the parties.
- (7) To dispose of procedural requests or similar matters.
- (8) To make and file an initial decision as provided by Rule XXII.
- (9) To certify questions to the Commission for its determination.
- (10) To take any other action authorized by Commission rule consistent with the Administrative Procedure Act.

Trial examiners shall perform no duties inconsistent with their duties and responsibilities as such. Save to the extent required for the disposition of ex parte matters as authorized by law, no trial examiner shall consult any person or party as to any fact in issue unless upon notice and opportunity for all parties to participate.

Trial examiners shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for the Commission.

The trial examiner is charged with the duty of conducting a fair and impartial hearing and of maintaining order in form and manner consistent with the dignity of the Commission. In the event that counsel in any proceeding shall refuse to obey the orders of the trial examiner, or be guilty of disorderly or contemptuous language or conduct in connection with any hearing, the trial examiner may, for good reasons stated in the record, suspend or bar such offending attorney from further participation in that case. Any attorney so suspended or barred shall have the right to appeal to the Commission. On such appeal, the Commission will review the action of the trial examiner and take such action as it deems warranted by the circumstances, including the issuance of an order to offending counsel to show cause why he should not be suspended or disbarred pursuant to Rule VII.

RULE XV. HEARINGS IN ADVERSARY PROCEEDINGS

All hearings pursuant to formal complaint shall be public unless otherwise ordered by the Commission, and such hearings shall be subject to the following conditions and requirements:

(a) Every party respondent shall have the right of due notice, cross examination, presentation of evidence, objection, exception, motion, argument, appeal and all other fundamental rights. Whenever a witness, on examination by the party calling him, is an adverse party, or is an officer, agent or employee of an adverse party, or appears to be hostile, unwilling, or evasive, such witness may

be interrogated by leading questions, and may be contradicted in all respects as if he had been called by the adverse party. The witness thus called may be contradicted and impeached by or on behalf of the adverse party and may be cross-examined by the adverse party only upon the subject matter of his examination by the party who called him.

(b) The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(c) Not less than five (5) days notice of the time and place of any indefinitely postponed hearing shall be given to counsel of record or to parties, but in appointing such hearings due regard shall be had for the convenience and necessity of all parties or their representatives.

(d) The trial examiner may withdraw from a case when he deems himself disqualified, or he may be withdrawn by the Commission after timely affidavits alleging personal bias or other disqualifications have been filed and the matter has been heard by the Commission or by a trial examiner whom it has delegated to investigate and report.

(e) Hearings shall be stenographically reported by the official reporter of the Commission under supervision of the presiding trial examiner. A transcript of said report shall be a part of the record and the sole official transcript of the proceeding. Transcripts will be supplied to respondents and to the public by the official reporter at rates not to exceed the maximum rates fixed by contract between the Commission and the reporter.

(f) Changes in the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. No physical changes shall be made in or upon the official record or copies thereof in the custody of the Commission. Lists of changes agreed to in writing by opposing counsel may be incorporated into the record, if and when approved by the trial examiner, at the close of evidence in support of the complaint, or at the final hearing before the trial examiner, or at any time thereafter before he files his decision, and at no other times. If any changes are ordered by the trial examiner without such written agreement between opposing counsel they shall be subject to objection and exception.

RULE XVI. SUBPOENAS

Subpoenas requiring the attendance of witnesses or the production of documentary evidence from any place in the United States, at any designated place of hearing, may be issued by the presiding trial examiner or a member of the Commission. Application therefor may be made either to the presiding trial examiner or to the Commission.

Application for subpoenas for the production of documentary evidence shall be made in writing to the presiding trial examiner or to the Commission. The application must have reasonable scope and specify as exactly as possible the documents desired, and show their general relevancy. The application shall be verified by oath or affirmation.

An appeal may be taken to the Commission by the parties from the presiding trial examiner's denial of a motion to quash or refusal to issue a subpoena for the production of documentary evidence.

RULE XVII. WITNESSES AND FEES

Witnesses at formal hearings shall be examined orally. Witnesses summoned in support of the complaint shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

Witnesses whose depositions are taken, and the persons taking such depositions, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Witness fees and mileage, and fees for depositions, shall be paid by the party at whose instance witnesses appear.

RULE XVIII. EVIDENCE

In general.—Counsel supporting the complaint shall have the general burden of proof and the proponent of any factual proposition shall be required to sustain the burden of proof with reference thereto. The trial examiner, subject to appeal to the Commission as provided in Rule XX, shall admit relevant, material and competent evidence, but shall exclude irrelevant, immaterial and unduly repetitious evidence.

Documentary.—Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such immaterial or irrelevant parts shall be excluded, and shall be segregated insofar as practicable.

Official notice of facts.—Where any decision of the trial examiner or any decision of the Commission, or part thereof, rests upon the taking of official notice of a material fact not appearing in the evidence in the record, any party shall, upon timely motion, be afforded an opportunity to show the contrary.

Objections.—Objections to evidence shall be in short form, stating the grounds relied upon, and the transcript shall not include argument or debate thereon except as ordered by the presiding officer. Rulings on such objections shall appear in the record.

RULE XIX. DEPOSITIONS

For good and exceptional cause the testimony of any witness may be taken in any case whether at issue or not, by deposition de bene esse or, prior to the pendency of a case, according to the common usage in chancery. Depositions may be taken orally or upon interrogatories before any person having power to administer oaths and who has been duly designated by the Commission or the presiding trial examiner.

Unless notice be waived, no deposition shall be taken except after at least five (5) days written notice to the parties within the United States, and fifteen (15) days notice when deposition is to be taken elsewhere.

Any party desiring to take the deposition of a witness shall make application in writing to the presiding trial examiner, setting out the reasons why such deposition should be taken, the character of the deposition, the time when, the place where, and the name and Post Office address of the person before whom such deposition is to be taken, the name and Post Office address of each witness, and the subject matter concerning which the witness is expected to testify. If good and exceptional cause be shown, an order containing such instruction will be made and served upon the parties.

In any formal matter not pending before a trial examiner, and in all proceedings not pursuant to formal complaint, application for the taking of a deposition shall be made to the Commission.

Upon application granted, such deposition may be taken before a person having power to administer oaths other than the person designated in the notice, provided reasonable written notice of such change is given the opposing party. Each witness so testifying shall be duly sworn and the adverse party shall have the right to cross examine such witnesses. The questions propounded to the

witnesses and the answers thereto shall be reduced to writing, and, in the presence of the officer taking the deposition, read to the witness and subscribed by the witness and certified in usual form by said officer. Thereafter the said officer shall forward said deposition with three copies thereof, in an envelope under seal, endorsed with the title of the case, and addressed to the Commission at its office in Washington, D. C. If in a pending case, such sealed deposition shall immediately be forwarded to the presiding trial examiner and at a time of hearing read in evidence subject to such objections to the questions and answers as were noted at the time of taking the deposition or as would be valid were the witness personally present at such hearing.

RULE XX. INTERLOCUTORY APPEALS TO THE COMMISSION FROM RULINGS OF TRIAL EXAMINERS

Except as provided for in rules NIV and NVI, parties shall not have the right to prosecute interlocutory appeals from rulings of a trial examiner during the time the proceeding is pending before him unless it be shown to the Commission that the prompt decision of such appeal is necessary to prevent unusual delay and expense.

RULE XXI. PROPOSED FINDINGS AND CONCLUSIONS BEFORE TRIAL EXAMINER

At the close of the reception of evidence before the trial examiner in all formal proceedings, or within a reasonable time thereafter to be fixed by the trial examiner, parties may file for consideration by the trial examiner their proposed findings and conclusions, together with their reasons therefor. Such proposals shall be in writing and shall contain exact references to the record and authorities relied on. Sufficient copies thereof shall be filed, pursuant to Rule XII, to provide one (1) copy for each party concerned and three (3) copies additional.

Upon request by either party, oral argument may be allowed by the trial examiner. The record shall show his ruling on each proposed finding and conclusion.

RULE XXII. TRIAL EXAMINER'S INITIAL DECISION IN ADVERSARY PROCEEDINGS

Within thirty (30) days from the date of the order closing the case before the trial examiner, he shall make and file an initial decision which shall become the decision of the Commission thirty (30) days from service thereof upon the parties unless prior thereto (1) an appeal is filed under the provisions of Rule XXIII, (2) the Commission by order stays the effective date of the decision, or (3) the Commission, upon its own initiative, issues an order placing the case on its own docket for review. On appeal or review the Commission may exercise all the powers which it would have exercised if it had made the initial decision.

The initial decision shall include a statement of (1) findings and conclusions, with the reasons or bases therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) an appropriate order.

Except where he shall have become unavailable to the Commission, the initial decision in each proceeding shall be made and filed by the trial examiner who presided therein.

No officer, employee, or agent, engaged in the performance of investigative or prosecuting functions for the Commission, and no party respondent or his agent or counsel in any case shall, in that or a factually related case, participate or

advise in the decision of the trial examiner, except as a witness or as counsel in public proceedings.

All findings, conclusions and orders made and issued by the trial examiner shall be based upon the whole record and supported by reliable, probative, and substantial evidence.

At any time prior to the filing of his initial decision the trial examiner may, for good cause shown, reopen the case for the reception of further evidence.

A copy of the trial examiner's initial decision shall be served upon each party, counsel, or other representative who has appeared pursuant to Rule VII.

RULE XXIII. APPEAL FROM INITIAL DECISION

A. Time for filing notice of intention to appeal.— A notice of intention to appeal may be filed by any party within ten (10) days after service upon him of the initial decision.

B. Who may appeal.— Any party may file an appeal who shall have filed a notice of intention to appeal in accordance with paragraph A, above.

C. Content of appeal brief.— An appeal shall be presented in the form of a brief, designated appeal brief, and shall contain, in the order here indicated, the following:

(1) A subject index of the matters presented, with page references, and a table of the cases (alphabetically arranged), textbooks and statutes cited, and reference to the pages where they are cited;

(2) A concise abstract or statement of the case;

(3) Exceptions to specific findings and conclusions of fact, or parts thereof, or conclusions of law in the initial decision; exceptions to the failure of the initial decision to include other findings or conclusions of fact, law or discretion; exceptions to any prejudicial error in procedure, including conduct or ruling of the trial examiner; or exceptions to the substance or form of the order or part thereof; together with proposed findings of fact, conclusions of fact or of law, and an order, or parts thereof, in lieu of those to which exception is taken, with specific page references to the parts of the record or the authority relied upon;

(4) Argument exhibiting clearly points of fact and of law relied upon in support of each exception taken, together with specific page references to the parts of the record cited and the legal or other authorities relied upon.

D. Limit of appeal.— No matter not included in the appeal brief may thereafter be presented to the Commission, in oral argument or otherwise.

E. Content of opposing brief.— The brief of a party opposing an appeal, designated opposing brief, shall contain only facts, reasons and arguments in opposition to exceptions taken in the appeal brief, except as may be deemed necessary to correct any inaccuracy or omission in the appeal brief.

F. Time for filing.— An appeal brief shall be filed within thirty (30) days from date of service of the initial decision. An opposing brief shall be filed within twenty (20) days after service of the appeal brief. No further brief shall be filed except by special leave granted.

G. Number.— Twenty (20) copies of the notice of intention to appeal and of all briefs shall be filed.

H. Form.— All briefs shall be printed, multigraphed, or otherwise neatly processed on good unglazed white paper in type not smaller than ten (10) point double leaded, citations and quotations single leaded; footnotes not less than eight (8) point single leaded. Type page shall not be more than twenty-nine (29) picas wide by approximately forty-eight (48) picas deep and trimmed page shall be seven (7) inches by ten (10) inches, with an inside margin of not less than one (1) inch.

I. Length.—Unless leave be granted, no brief shall exceed seventy-five (75) printed pages.

J. Signing.— At least one copy of the notice of intention to appeal and of each brief shall be signed in ink by the submitting party.

RULE XXIV. ORAL ARGUMENTS

Oral arguments before the Commission shall be had as ordered, on written application of the Director, Bureau of Litigation² of this Commission, or of the respondent, or of attorney for respondent, filed at the time of filing brief.

Oral arguments before the Commission shall be reported stenographically unless otherwise ordered by the Commission.

RULE XXV. COMMISSION'S ADJUDICATION

Upon appeal of a case to the Commission from the initial decision, the Commission will consider such parts of the record as are cited therein, or which may be necessary to resolve the issues presented, and in addition will, to the extent necessary or desirable, exercise all the powers which it would have exercised if it had made the initial decision. The Commission will thereafter rule upon each exception taken to the initial decision and render its decision, incorporating therein (a) that part of the initial decision which is affirmed; (b) any additional findings as to facts, law, or discretion; and (c) such an order as it may deem just and appropriate.

No officer, employee or agent, engaged in the performance of investigative or prosecuting functions for the Commission, and no party respondent or his agent or counsel in any case shall, in that or a factually related case, participate or advise in the decision of the Commission, except as a witness or as counsel in public proceedings.

RULE XXVI. REPORTS SHOWING COMPLIANCE WITH ORDERS AND WITH STIPULATIONS

In every case in which the Commission shall have issued an order to cease and desist, and in every instance in which the Commission approves and accepts a stipulation wherein a party agrees to cease and desist from the unlawful methods, acts, or practices involved, the respondent or respondents named in such order and the party or parties so stipulating shall file with the Commission within sixty (60) days after service of such order, or within sixty (60) days after notice of approval of such stipulation, a report, in writing, setting forth in detail the manner and form in which they have complied with said order or with said stipulation: Provided, however, That if within the said sixty (60) day period respondent shall file petition for review in a circuit court of appeals, the time for filing report of compliance will begin to run de novo from the final judicial determination; and provided further that where the order prevents the use of a false advertisement of a food, drug, device, or cosmetic, which may be injurious to health because of results from such use under the conditions prescribed in the advertisement, or under such conditions as are customary or usual, or if the use of such advertisement is with intent to defraud or mislead, an interim report stating whether and how respondents intend to comply shall be filed within ten (10) days.

² Under the reorganization announced by the Commission on May 15, 1950, and effective June 1, 1950, such an application would be in order by the Director of the Bureau of Antimonopoly or the Director of the Bureau of Antideceptive Practices, as the case might be.

Within its discretion, the Commission may require any respondent upon whom such order has been served, and any party entering into such stipulation, to file with the Commission from time to time thereafter, further reports in writing, setting forth in detail the manner and form in which they are complying with said order or stipulation.

Reports of compliance shall be signed in ink by respondents or by the parties stipulating.

RULE XXVII. REOPENING OF PROCEEDINGS

In any case where an order to cease and desist has been issued by the Commission it may, upon notice to the parties, modify or set aside, in whole or in part, its report of findings as to the facts or order in such manner as it may deem proper at any time prior to expiration of the time allowed for filing a petition for review or prior to the filing of the transcript of record in the proceeding in a Circuit Court of Appeals of the United States pursuant to a petition for review or for enforcement of such order.

In any case where an order to cease and desist issued by the Commission has become final by reason of court affirmance or expiration of the statutory period for court review without a petition for such review having been filed, the Commission may at any time after reasonable notice and opportunity for hearing as to whether changed conditions of fact or of law or the public interest so require, reopen and alter, modify or set aside in whole or in part its report of findings as to the facts or order therein whenever in the opinion of the Commission, after such hearing, such action is required by said changed conditions or by the public interest.

In any case where an order dismissing a formal complaint of the Commission has been entered the Commission may, upon reasonable notice to the parties and opportunity for a hearing as to whether said proceeding should be reopened, issue an order reopening the same whenever, in the opinion of the Commission, changed conditions of fact or of law or the public interest so require.

RULE XXVIII. TRADE PRACTICE CONFERENCE PROCEDURE

(a) Purpose.—The trade practice conference procedure has for its purpose the establishment, by the Commission, of trade practice rules in the interest of industry and the purchasing public. This procedure affords opportunity for voluntary participation by industry groups or other interested parties in the formulation of rules to provide for elimination or prevention of unfair methods of competition, unfair or deceptive acts or practices and other illegal trade practices. They may also include provisions to foster and promote fair competitive conditions and to establish standards of ethical business practices in harmony with public policy. No provision or rule, however, may be approved by the Commission which sanctions a practice contrary to law or which may aid or abet a practice contrary to law.

(b) When authorized.—Trade practice conference proceedings may be authorized by the Commission upon its own motion or upon application therefor whenever such proceedings appear to the Commission to be in the interest of the public. In authorizing proceedings, the Commission may consider whether such proceedings appear to have possibilities (1) of constructively advancing the best interests of industry on sound competitive principles in consonance with public policy, or (2) of bringing about more adequate or equitable observance of laws under which the Commission has jurisdiction, or (3), of otherwise protecting or advancing the public interest.

(c) Application.— Application for a trade practice conference may be filed with the Commission by any interested person, party, or group. Such application shall be in writing and be signed by the applicant or the duly authorized representative of the applicant or group desiring such conference. The following information, to the extent known to the applicant, shall be furnished with such application or in a supplement thereto:

- (1) A brief description of the industry, trade, or subject to be treated.
- (2) The kind and character of the products involved.
- (3) The size or extent and the divisions of the industry or trade groups concerned.
- (4) The estimated total annual volume of production or sales of the commodities involved.
- (5) List of membership of the industry or trade groups concerned in the matter.
- (6) A brief statement of the acts, practices, methods of competition or other trade practices desired to be considered, or drafts of suggested trade practice rules.

(d) Informal discussions with of the Commission's staff.— Any interested person or group may, upon request, be granted opportunity to confer in respect to any proposed trade practice conference with the Commission's trade practice conference office, either prior or subsequent to the filing of any such application. They may also submit any pertinent data or information which they desire to have considered. Such submission shall be made during such period of time as the Commission or its duly authorized official may designate.

(e) Industry conferences.— Public notice of the time and place of any such authorized conference shall be issued by the Commission. A member of the Commission or of its staff shall have charge of the conference and shall conduct the conference pursuant to direction of the Commission and in such manner as will facilitate the proceeding and afford appropriate consideration of matters properly coming before the conference. A transcript of the conference proceedings shall be made, which, together with all rules, resolutions, modifications, amendments or other matters offered, shall be filed in the office of the Commission and submitted for its consideration.

(f) Public hearing on proposed rules.— Before final approval by the Commission of rules for an industry, and upon public notice, further opportunity shall be afforded by the Commission to all interested persons, corporations or other organizations, including consumers, to submit in writing relevant suggestions or objections and to appear and be heard at a designated time and place.

(g) Promulgation of rules.— When trade practice rules shall have been finally approved and received by the Commissioner, they shall be promulgated by official order of the Commission and published, pursuant to law, in the Federal Register. Said rules shall become operative thirty (30) days from date of promulgation or at such other time as may be specified by the Commission. Copies of the final rules shall be made available at the office of the Commission. Under the procedure of the Commission a copy of the trade practice rules as promulgated by the Commission is sent to each member of the industry whose name and address is available, together with an acceptance form providing opportunity to such member to signify his intention to observe the rules in the conduct of his business.

(h) Violations. —Complaints as to the use, by any person, corporation or other organization, of any act, practice or method inhibited by the rules may

be made to the Commission by any person having information thereof. Such complaints, if warranted by the facts and the law, will receive the attention of the Commission in accordance with the law. In addition, the Commission may act upon its own motion in proceeding against the use of any act, practice or method contrary to law.

(i) Amendment of rules.— Trade Practice rules may be amended or rescinded by the Commission upon its own motion or upon application filed with it by any interested person, party, or group. Such application shall be in writing, signed by the applicant or his duly authorized representative, and shall set forth the reasons for the requested action.

RULE XXIX. PUBLIC INFORMATION

The Rules of Practice of the Commission, and such amendments as may be made thereto, shall be published in the Federal Register and may be obtained from the Commission upon application.

The findings, conclusions of law, and final orders of the Commission in respective formal proceedings and a digest of accepted stipulations to desist from unlawful practices shall be published in the official reports of the Commission.

Trade Practice Conference Rules for respective industries, issued under Rule XXVIII hereto, may be obtained upon application to the Commission and shall be published in the Federal Register.

Information concerning the activities of the Commission will be released from time to time under the direction or pursuant to the authority of the Commission.

In proceedings instituted by the issuance of formal complaint, the pleadings, transcript of testimony, exhibits, and all documents received in evidence or made a part of the record therein shall be available for inspection and copying by the public at the convenience of the Commission.

Documents, records, and reports made public by the Commission, including stipulations to cease and desist, certain trade practice conference records, and certain papers filed under the Wool Products Labeling Act, shall be available for inspection and copying at the convenience of the Commission.

The records and files of the Commission, and all documents, memoranda, correspondence, exhibits, and information of whatever nature, other than the documentary matters above described, coming into the possession or within the knowledge of the Commission or any of its officers or employees in the discharge of their official duties, are confidential, and none of such material or information may be disclosed, divulged, or produced for inspection or copying except under the following circumstances: Upon good cause shown, the Commission may by order direct that certain records, files, papers, or information be disclosed to a particular applicant.

(a) Application by a member of the public for such disclosure shall be in writing, under oath, setting forth (1) the interest of the applicant in the subject matter; (2) a description of the specific information, files, documents, or other material inspection of which is requested; (3) whether copies are desired; and (4) the purpose for which the information or material, or copies, will be used if the application is granted. Upon receipt of such an application the Commission will take action thereon, having due regard to statutory restrictions, its rules of practice, and the public interest.

(b) In the event that confidential material is desired for inspection, copying, or use by some agency of the Federal or a State Government, a request therefor may be made by the administrative head of such agency. Such request shall

be in writing, and shall describe the information or material desired, its relevancy to the work and function of such agency and, if the production of documents or records or the taking of copies thereof is asked, the use which is intended to be made of them. The Commission will consider and act upon such requests, having due regard to statutory restrictions, its rules of practice, and the public interest.

In cases in which an officer or employee of the Commission has been lawfully served with a subpoena duces tecum, material designated herein as confidential shall be produced only when and as authorized by the Commission. Service of such subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such order or give such instructions as it shall deem advisable in the premises. If the officer or employee so served has not received instructions from the Commission prior to the return date of the subpoena, he shall appear in response thereto and respectfully decline to produce the documents or records subpoenaed (pointing out that he is not permitted to do so under this rule), and request a continuance pending action by or instructions from the Commission. If, notwithstanding, the court or other body orders the production of any of the material subpoenaed, the officer or employee shall immediately report the facts to the Commission.

RULE XXX. PROCEDURE FOR ESTABLISHING QUANTITY LIMITS

A. How Initiated

Proceedings for the establishment of a quantity limit rule are initiated by resolution of the Commission either upon its own motion or pursuant to petition therefor.

B. Petition for Establishment, Amendment or Repeal of a Quantity-Limit Rule

Any interested party may at any time file with the Commission, in writing, a request or petition for the establishment of a quantity-limit rule for any commodity or class of commodities, or for the revision or repeal of a previously established rule. Such petition shall state the petitioner's interest and such relevant facts, documented if possible, as may tend to show the need for the action requested.

C. Investigation

If the Commission believes that consideration should be given to the fixing or establishing of quantity limits for a particular commodity or class of commodities, it shall initiate an investigation thereof by appropriate resolution. Such investigation shall include the ascertainment of facts and information concerning the quantity differentials granted to purchasers in the distribution of the particular commodity or class of commodities, the number of available purchasers of given quantities, and facts and information pertinent to competitive conditions existing in the distribution thereof. The investigation shall be nonpublic and facts and information so obtained, such as the names of purchasers, the volume of their purchases, prices paid, conditions of sale and the details of competitive relations, shall not be published except in composite form so as not to reveal facts as to specific parties.

(1) Voluntary process.— Investigation shall be conducted by any authorized agent or agents of the Commission, who may, by interview, conference, corre-

spondence or otherwise, request any person believed to have information or documents relevant to the inquiry to furnish such information orally or in writing, or to produce or permit the copying of such documents.

(2) Compulsory process.— In the conduct of such investigation, the Commission may invoke any or all of the compulsory processes authorized by law and every person in any manner required to respond to such process shall be given actual notice of the purpose of the investigation. The compulsory process which may be invoked shall include the following:

(a) The issuance of a subpoena directing the party named therein to appear before the officer designated therein and to testify to facts and matters under investigation or produce documents relating thereto, or both. Oral information obtained by this compulsory process shall be under oath and a stenographic record shall be made thereof;

(b) The issuance of a notice to a corporation, to produce for examination and copying documents relating to any matter under investigation;

(c) The issuance of an order requiring a corporation to file a special report or answers in writing to specific questions.

(3) Rights of witnesses under compulsory process.—(a) Any person required to attend and testify or submit documents or other data shall be entitled to retain or, on payment of lawfully prescribed cost, procure a copy of any document produced by such person and a copy of the transcript of his own testimony;

(b) Any person compelled to appear at an investigation may be accompanied and advised by counsel or other qualified representative or by both, but such counsel or qualified representative may not, as a matter of right, otherwise participate in the investigation.

D. Hearing on Proposed Quantity-Limit Rule

(1) Formulation of proposed rule.— When, after due consideration of the facts and information so obtained, it shall appear to the Commission that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce, it shall formulate a proposed quantity-limit rule.

(2) Publication of proposed rule.— The proposed quantity-limit rule shall be published in the Federal Register and otherwise, to the extent practicable, made available to interested parties, and the notice thereof shall include the following:

(a) The rule, amended rule, or repeal proposed;

(b) A statement of the purpose to be accomplished by the proposed rule, together with a reference to the authority under which the rule is proposed and the ultimate matters of fact in support thereof; (c) A statement of the time within which any interested person may present to the Commission in writing, in accordance with paragraph (D) (3) (a) of this section, any data, views or argument concerning the proposed rule and within which time to present, if desired, a request for opportunity to be heard orally thereon.

(3) Method of presenting videos, data and argument—(a) Written data.— Seven copies of such written views, data and argument shall be submitted to the Commission, and shall conform to the requirements of Rule XII of the Commission's rules of practice.

(b) Oral hearing.— Oral hearing may be granted within the discretion of the Commission.

E. Promulgation of Quantity-Limit Rule

After the consideration of the results of its investigation or investigations and of the data, views and arguments presented by interested parties, the Commission will, if it deems such action warranted, promulgate a quantity-limit rule. Such rule, which may be the proposed rule or a modification or revision thereof, shall fix and establish maximum quantities of the particular commodity or class of commodities upon which differentials on account of quantity may thereafter be granted. Such quantity-limit rule shall be published in the Federal Register, together with a reference to the authority or authorities therefor, a statement of its basis and purpose, and the effective date thereof, which shall be not less than thirty (30) days after the date of such publication.

F. Amendment or Repeal of Quantity-Limit Rule

The procedure for the amendment or repeal of a quantity-limit rule shall be the same as that for the establishment of a new quantity-limit rule.

G. Enforcement of Quantity-Limit Rule

Procedure in cases of violations of a quantity-limit rule shall be in accordance with the Commission's applicable rules of practice.

RULE XXXI. PETITIONS FOR THE ISSUANCE, AMENDMENT, OR REPEAL OF RULES

Any interested person may petition for the issuance, amendment, or repeal of a rule. Such petitions shall specifically set forth the proposed rule, amendment, or repeal, together with a statement of the basis for and reasons supporting the proposal made, and seven copies of such petition shall be filed. After consideration of any such petition, the Commission will take such action with respect thereto as it deems appropriate and duly inform petitioner thereof.

When, pursuant to a petition therefor, or upon its own motion, the Commission proposes to issue a substantive rule or amend or repeal such a rule, notice thereof and further rule-making procedure will be in conformity with the provisions of Section 4 of the Administrative Procedure Act.

This rule is not applicable to matters provided for under Rules XXVIII and XXX.

Statement of Policy

STATUS OF APPLICANT OR COMPLAINANT

The so-called "applicant" or complaining party has never been regarded as a party in the strict sense. The Commission acts only in the public interest. It has always been and now is the rule not to publish or divulge the name of an applicant or complaining party, and such party has no legal status before the Commission except where allowed to intervene as provided by the statute.

POLICY AS TO PRIVATE CONTROVERSIES

It is the policy of the Commission not to institute proceedings against alleged unfair methods of competition or unfair or deceptive acts or practices where the alleged violation of law is a private controversy redressable in the courts, except where said practices tend to affect the public. In cases where the alleged injury is one to a competitor only and is redressable in the courts by an action by the aggrieved competitor and the interest of the public is not involved, the proceeding will not be entertained.

SETTLEMENT OF CASES BY TRADE PRACTICE CONFERENCE AND STIPULATION AGREEMENTS

Upon the promulgation of trade practice conference rules for an industry, an examination will be made of all charges of law violations by members of that industry then pending before the Commission which have not reached the formal stage through the issuance of complaint. In those instances in which the pending charges are adequately covered by the trade practice conference rules, and which are not excluded by the exceptions hereinafter stated, the Commission will consider the advisability of closing the matters without prejudice to reopening whenever that action appears to be warranted. In such instances consideration will be given to whether or not a proposed respondent has subscribed to the trade practice conference rules for his industry, to whether or not there is adequate reason to believe that he is in fact complying with such rules and will continue to do so, and to whether or not the public interest or the applicable statute requires any further proceedings.

Upon the promulgation of trade practice conference rules for an industry, formal complaints which have not then been adjudicated and in which the charges are adequately covered by such rules, and which are not excluded by the exceptions hereinafter stated, may be brought directly before the Commission on motion to suspend without prejudice to the Commission's right to resume the proceeding. In considering such motions the Commission will be guided by factors similar to those outlined above with respect to informal matters.

Whenever the Commission shall have reason to believe that any person has been or is using unfair methods of competition or unfair or deceptive acts or practices in commerce, and that the interest of the public will be served by so

doing, it may, in instances which are not excluded by the exceptions hereinafter stated, withhold service of complaint and extend to the person opportunity to execute a stipulation satisfactory to the Commission, in which the person, after admitting the material facts, promises and agrees to cease and desist from and not to resume such unfair methods of competition or unfair or deceptive acts or practices. All such stipulations shall be matters of public record, and shall be admissible as evidence of prior use of the unfair methods of competition or unfair or deceptive acts or practices involved in any subsequent proceeding against such person before the Commission.

It is the policy of the Commission to utilize the trade practice conference and stipulation procedures to encourage widespread observance of the law by enlisting the cooperation of members of industries and informing them more fully of the requirements of the law, so that wherever consistently possible the Commission may avoid the need for adversary proceedings against persons who, through misunderstanding or carelessness, may violate the law unintentionally. But it is not the policy of the Commission to grant the privilege of settling cases through trade practice conference or stipulation agreements to persons who have violated the law where such violations involve intent to defraud or mislead; false advertisement of foods, drugs, devices or cosmetics which are inherently dangerous or where injury is probable; suppression or restraint of competition through conspiracy or monopolistic practices; or violations of the Clayton Act; nor will the privilege be granted where the Commission is of the opinion that such procedure will not be effective in preventing continued use of the unlawful methods, acts or practices. The Commission reserves the right in all cases to withhold the privilege of settlement by trade practice conference or stipulation agreements. When in connection with an industrywide investigation informal matters of whatever nature are docketed against individual members of that industry, from which the promulgation of trade practice conference rules ensues covering the questioned practices, and which are subscribed to and accepted by the affected members of the industry, the Commission will give careful consideration to whether or not the public interest requires further investigation of such informal matters.

Explanatory statement.—The Commission has long had a public statement of policy governing the settlement of informal cases by stipulation agreements. There has been no comparable generally published statement of policy with respect to trade practice conference agreements. Under its present program, the Commission may institute trade practice conferences on its own initiative. When it appears that questionable practices are so prevalent in an industry that they may be more effectively and expeditiously reached by trade practice conference than by individual proceedings, the Commission may utilize that procedure in dealing with the over-all problem. In those situations it is necessary, after the promulgation of trade practice conference rules, to determine what further action should be taken in pending informal cases relating to the same parties and practices, as well as to determine the extent to which pending formal matters may have been affected.

It is the desire of the Commission to inform the public on these matters, but to avoid commitments which may abrogate its statutory procedures or frustrate the effectiveness of its corrective processes. To this end the Commission has formulated a statement of policy concerning the scope and effect of its trade practice conference procedure insofar as it may affect the settlement of pending matters before it, and it has reappraised its policy with respect to the settlement of cases by stipulation agreements.

For many years the Commission has sought to encourage voluntary compliance with the laws which it administers. It has utilized individual stipulation

agreements and conferences with whole industries and has otherwise cooperated with businessmen to inform and guide them with respect to the scope and meaning of the laws within its jurisdiction. A cooperative procedure similar to trade practice conferences was first used by the Commission in about 1919; the Trade Practice Conference Division was established in 1926; and the present active list of trade practice conference rules covers about 160 industries.

It has long been the Commission's practice in certain instances where proper circumstances are present to dispose of pending matters upon acceptance by the affected parties of trade practice rules for their industry covering the charges in such matters. This practice was specifically limited in 1936 when the Commission determined that whenever an application for trade practice conference is received from an industry, some or all of whose members are respondents in proceedings before the Commission involving alleged violations of the Clayton Act or combinations or conspiracies in restraint of trade in violation of the Federal Trade Commission Act, such proceedings will have to go forward without regard to the trade practice conference procedure.

The cooperative procedures, however, require a constant vigilance to avoid the dangers inherent in them. Their use should never be permitted as an easy escape for wilful violators of the laws administered by the Commission or as a means for avoiding or delaying the effectiveness of the Commission's corrective action. These considerations have governed the Commission's policy with respect to the settlement of pending matters by trade practice conference or stipulation agreements.

Trade practice conference rules have no force of law in themselves. Violations of those rules are not proceeded against directly. The Commission can proceed only on a charge of violation of the law upon which the rules are based. Their purpose is to express the requirements of the statutes and decisions in terms which may be understood by the members of particular industries and in language addressed to their problems and practices. An agreement by a member of an industry to abide by the rules is an expression of intention to abide by the basic law.

It is manifestly difficult to draft a statement of policy on a broad basis which does not afford an evasive device to the wilful violator while seeking to avoid unduly harsh treatment of the unintentional or casual violator. Any statement of policy must, therefore, depend for its effectiveness upon the consistent and sound judgment of the Commission in applying it in individual instances. But no statement of policy should be so broad as to constitute an invitation to reluctant or recalcitrant respondents to avail themselves of informal settlements for the purpose of delaying or defeating effective action. It should invite only those who desire in good faith to correct unlawful practices on a cooperative and voluntary basis. The object of the Commission is to correct—not to punish. But there must be a reasonable assurance that any cooperative procedure will be effective and provide full freedom to institute such further proceedings as are or may become necessary in the public interest.

Conspiracies and monopolistic practices are, with few exceptions, deliberately engaged in for the purpose of restraining competition and ordinarily with knowledge of their illegality. Since good faith is ordinarily lacking in such violations, it cannot be expected to be present in agreements by the conspirators to discontinue and not resume the violations. Violations of this type are frequently also criminal violations of the Sherman Act, and the settlement of such violations by informal agreement may impair the rights of private litigants or compromise the enforcement of that act by the Department of Justice. When conspirators are discovered, or when they are on the verge of being discovered, they would

doubtless be glad to make use of the Commission's trade practice conference or stipulation procedure as a protection against the more rigorous procedure provided by the antitrust laws.

Trade practice conference rules may include rules against restraints of trade and against violations of the Clayton Act. Insofar as such rules may be informative to and followed by members of the affected industries, they have a substantial value. They should not be accepted, however, as a basis for the settlement of cases in which the Commission has reason to believe that such violations have occurred.

COOPERATION WITH OTHER AGENCIES

In the exercise of its jurisdiction with respect to practices and commodities concerning which other Federal agencies also have functions, it is the established policy of the Commission to cooperate with such agencies to avoid unnecessary overlapping or possible conflict of effort.

It is the policy of the Commission not to institute proceedings in matters such as the labeling or branding of commodities where the subject matter of the questioned portion of the labeling or branding used is, by specific legislation, made a direct responsibility of another Federal agency.

In proceedings involving false advertisements of food, drugs, cosmetics, and devices as defined in section 15 of the Federal Trade Commission Act, account is taken of the labeling requirements of the Food and Drug Administration in any corrective action applied to the advertising. In the case of advertisements of food, drugs, cosmetics, or devices which are false because of failure to reveal facts material with respect to the consequences which may result from the use of the commodity, it is the policy of the Commission to proceed only when the resulting dangers may be serious or the public health may be impaired, and in such cases to require that appropriate disclosure of the facts be made in the advertising.

Investigations by the Commission, 1915-51

Since its establishment in 1915, the Federal Trade Commission has conducted numerous general inquiries which are alphabetically listed and briefly described in the following pages.¹ They were made at the request of the President, the Congress, the Attorney General, Government agencies, or on motion of the Commission pursuant to the Federal Trade Commission Act.

Reports on these inquiries in many instances have been published as Senate or House documents or as Commission publications. Printed documents, unless indicated as being out of print,² may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Processed publications are available without charge from the Federal Trade Commission while the supply lasts.

Agencies initiating or requesting investigations are indicated in parentheses in the headings below.

Accounting Systems (F. T. C.).—Pointing the way to a general improvement in accounting practices, the Commission, published *Fundamentals of a Cost System for manufacturers* (H. Doc. 1356, 64th, 31 p., o. p., 7/15/16) and a *System of Accounts for Retail Merchants* (19 p., o. p., 7/15/16).

Accounting Systems.—See *Distribution Cost Accounting*.

Advertising as a Factor in Distribution.—See *Distribution Methods and Costs*.

Agricultural Implements.—See *Farm Implements and Distribution Methods and Costs*.

Agricultural Implements and Machinery (Congress).³—Prices of farm products reached record lows in 1932 but prices of many farm implements, machines, and repair parts maintained high levels resulting in widespread complaints in the next few years. The Commission investigated the situation (Public Res. 130, 74th, 6/24/36) and, following submission of its report, *Agricultural Implement and Machinery Industry* (Doc. 702, 75th, 1,176 p., 6/6/38), the industry made substantial price reductions. The report criticized certain competitive practices on the part of the dominant companies which the companies later promised to remedy. It showed, among other things, that a few major companies had maintained a concentration of control which resulted in large part from their acquisition of the capital stock or assets of competitors prior to enactment of the Clayton Antitrust Act in 1914 and thereafter from their purchase of assets of competitors rather than capital stock.⁴ (See also under *Farm Implements and Independent Harvester Co.*)

¹ The wartime cost-finding inquiries, 1917-18 (p. 162), include approximately 370 separate Investigations.

² Documents out of print (designated "o. p.") are available in depository libraries.

³ Inquiries desired by either House of Congress are now undertaken by the Commission as a result of concurrent resolutions of both Houses. For further explanation, see footnote 8, p. 102.

⁴ F. T. C. recommendations that section 7 of the Clayton Act be amended to declare unlawful the acquisition of corporate assets under the same conditions that acquisition of corporate stock has been unlawful since 1914, are discussed in *Chain Stores—Final Report on the Chain Store Investigation* (S. Doc. 4, 74th, 12/14/34), p. 96; *Summary Report on*

Agricultural Income (Congress).—Investigating a decline in agricultural income and increases or decreases in the income of corporations manufacturing and distributing wheat, cotton, tobacco, livestock, milk, and potato products (Public Res. 61, 74th, 8/27/35), and table and juice grapes, fresh fruits and vegetables (Public Res. 112, 74th, (9/20/36), the Commission made recommendations concerning, among other things, the marketing of commodities covered by the inquiry; corporate consolidations and mergers;⁵ unbalanced agricultural-industrial relations; cooperative associations; production financing; transportation; and terminal markets. Its recommendations for improvement of the Perishable Agricultural Commodities Act were adopted by Congress in amending that act (Public, 328, 75th) in 1937. [Report of the F. T. C. on Agricultural Income Inquiry, Part I, Principal Farm Products, 1,134 p., 3/2/37 (summary, conclusions, and recommendations, S. Doc. 54, 75th, 40 p.); Part II, Fruits, Vegetables, and Grapes, 906 p. 6/10/37; Part III, Supplementary Report, 154 p., and interim reports of 12/26/35 (H. Doc. 380, .74th, 6 p.), and 2/1/37 (S. Doc. 17, 75th, 16 p.).]

Agricultural Prices.—See Price Deflation.

Aluminum Foundries (W. P. B.), Wartime, 1942-43.—Details were obtained for the War Production Board, at its request, from aluminum foundries throughout the U. S. covering their operations for May 1942 and their compliance with W. P. B. Supplementary Orders m-1-d, M-1-c, and M-1-f.

Antifreeze Solutions, Manufacturers of (W. P. B.), Wartime, 1943-44.—War Production Board Order L-258 of 1/20/43 prohibited production of salt and petroleum-base antifreeze solutions. While production of these products had ceased, great quantities were reported to be still in the hands of producers and distributors. To enable W. P. B. to determine what further action should be taken to protect essential automotive equipment from these solutions, it requested the Commission to locate producers' inventories as of 1/20/43, and to identify all deliveries made from such inventories to distributors subsequent to that date.

Automobiles.—See Distribution Methods and Costs, and Motor Vehicles.

Bakeries and Bread.—See under Food.

Beet Sugar.—See under Food—Sugar.

Building Materials.—See Distribution methods and Costs.

Calcium Arsenate (Senate).—High prices of calcium arsenate, a poison used to destroy the cotton boll weevil (S. Res. 417, 67th, 1/23/23), appeared to be due to sudden increased demand rather than trade restraints (Calcium Arsenate Industry, S. Doc. 345, 67th, 21 p., 3/3/23).

Capital Equipment (W. P. B.), Wartime, 1942-43.—For the War Production Board, a survey was made in connection with Priorities Regulation No. 12, as amended 10/3/42, of concerns named by it to determine whether orders had been improperly rerated to secure capital equipment or whether orders that had been rerated had been extended for the purpose of obtaining capital equipment in violation of priorities regulations.

Cartels.—See paragraphs headed Copper Industry, International Phosphate Cartels, Sulphur Industry, International Electrical Equipment Cartel, International Steel Cartels, Fertilizer (F. T. C.), and International Alkali Cartels.

Conditions With Respect to the Sale and Distribution of Milk and Dairy Products (H. Doc. 94, 75th, 1/4/37), p. 38; Report of the F. T. C. on Agricultural Income Inquiry, Part I (3/2/37), p. 26; Agricultural Implement and Machinery Industry (H. Doc. 702, 75th, 6/6/39), p. 1038; The Present Trend of Corporate Mergers (3/7/47); The Merger Movement: A Summary Report (1948); and F. T. C. Annual Reports: 1938, pp. 19 and 29; 1939, p.14; 1940, p.12; 1941, p. 19; 1942, p. 9; 1943, p. 9; 1944, p.7; 1945, p.8; 1946, p.12; 1947, p. 12; and 1948, p. 11.

⁵ See footnote 4, p 140.

Cement (Senate).—Inquiry into the cement industry's competitive conditions and distributing processes (S. Res. 448, 71st, 2/16/31) showed that rigid application of the multiple basing-point price system⁶ tended to lessen price competition and destroy the value of sealed bids; concerted activities of manufacturers and dealers strengthened the system's price effectiveness; and dealer associations' practices were designed to restrict sales to recognized "legitimate" dealers (Cement Industry, S. Doc. 71, 73d, 160 p., o. p., 6/9/33).

Chain Stores (Senate).—Practically every phase of chain-store operation was covered (S. Res. 224, 70th, 5/12/28), including cooperative chains, chain-store manufacturing and wholesale business, lenders and loss leaders, private brands, short weighing and overweighing and sales, costs, profits, wages, special discounts and allowances, and prices and margins of chain and independent grocery and drug distributors in selected cities. (For subtitles of 33 reports published under the general title, Chain Stores, 1931-33, see F. T. C. Annual Report, 1941, p. 201.)

In the Final Report on the Chain-Store Investigation (S. Doc. 4, 74th, 110 p., o. p., 12/14/34), legal remedies available to combat monopolistic tendencies in chain-store development were discussed.⁷ The Commission's recommendations pointed the way to subsequent enactment of the Robinson-Patman Act (1936) prohibiting price and other discriminations, and the Wheeler-Lea Act (1938) which amended the Federal Trade Commission Act so as to broaden the prohibition of unfair methods of competition in section 5 to include unfair or deceptive acts or practices in interstate commerce.

Chromium Processors (W. P. B.), Wartime, 1942-43.—For the War Production Board, the Commission investigated the transactions of the major chromium processors to determine the extent to which they were complying with Amendment No. 2 to W. P. B. General Preference Order No. m-18-a, issued 2/4/42. The investigation was conducted concurrently with a survey of nickel processors.

Cigarette Shortage (F. T. C. and Senate Interstate Commerce Committee Chairman), Wartime, 1944-45.— In response to complaints from the public and a request from the Chairman of the Senate Interstate Commerce Committee (letter dated 12/1/44), the Commission investigated the cigarette shortage and reported, among other things that the scarcity was directly traceable to the large volume of cigarettes moving to the armed forces and the Allies; that it was not attributable to violations of laws administered by the Commission; but that certain undesirable practices such as hoarding and tie-in sales had developed. (Report of the F. T. C. on the Cigarette Shortage, 33 pages, processed, 2/13/45.)

Coal (Congress and F. T. C.), Wartime, 1917-18, Etc.—From 1916 through the first World War period and afterward, the Commission at different times investigated anthracite and bituminous coal prices and the coal industry's financial condition. Resulting cost and price reports are believed to have substantially benefited the consumer. Among the published reports were: Anthracite Coal Prices, preliminary (S. Doc. 19, 65th, 4 p., o. p., 5/4/17); Preliminary Report by the F. T. C. on the Production and Distribution of Bituminous Coal (H. Doc. 152, 65th, 8 p., o. p., 5/19/17); Anthracite and Bituminous Coal Situation, summary (H. Doc. 193, 65th, 29 p., o. p., 6/19/17); and Anthracite and Bituminous Coal (S. Doc. 50, 65th, 420 p., o. p., 6/19/17)—pursuant to S. Res. 217, 64th 6/22/16; H. Res. 352, 64th, 8/18/16, and S. Res. 51, 65th, 5/1/17; Washington, D. C., Retail Coal Situation (5 p., release, processed, o. p., 8/11/17)—pursuant to F. T. C. motion; Investment and Profit in Soft-Coal Mining (two parts, 5/31/22 and 7/6/22,

⁶Basing-point systems are also discussed in the published reports listed herein under "Price Bases," "Steel Code," and "Steel Sheet Piling."

⁷ See footnote 4, p. 140.

218 p., o. p., S. Doc. 207, 65th)—pursuant to F. T. C. motion; and Report of the F. T. C. on Premium Prices of Anthracite (97 p., o. p., 7/6/25)—pursuant to F. T. C. motion.

Coal, Cost of Production (F. T. C.), Wartime, 1917-18.—President Wilson fixed coal prices by Executive order under the Lever Act (1917) on the basis of information furnished by the Commission. For use of the U. S. Fuel Administration in continuing price control, the Commission compiled monthly cost production reports, collecting cost records for 1917-18 for about 99 percent of the anthracite and 95 percent of the bituminous coal production (Cost Reports of the F. T. C.—Coal, 6/30/19, summarized for principal coal-producing States or regions: (1) Pennsylvania, bituminous, 103 p., o. p.; (2) Pennsylvania, anthracite, 145 p., o. p.; (3) Illinois, bituminous, 127 p.; (4) Alabama, Tennessee, and Kentucky, bituminous, 210 p.; (5) Ohio, Indiana, and Michigan, bituminous, 288 p., o. p.; (6) Maryland, West Virginia, and Virginia, bituminous, 280 p., o. p.; and (7) trans-Mississippi States, bituminous, 459 p., o. p.).

Coal, Current Monthly Reports (F. T. C.).—The Commission (December 1919) initiated a system of current monthly returns from the soft coal industry similar to those compiled during the World War, 1917-18 (Coal-Monthly Reports on Cost of Production, 4/20/20 to 10/30/20, Nos. 1 to 6, and two quarterly reports with revised costs, 8/25/20 and 12/6/20, processed, o. p.). An injunction to prevent the calling for the monthly reports (denied about seven years later) led to their abandonment.

Combed Cotton Yarns.—See Textiles.

Commercial Bribery (F. T. C.).—Investigating the prevalence of bribery of customers' employees as a means of obtaining trade, the Commission published A Special Report on Commercial Bribery (H. Doc. 1107, 65th, 3 p., o. p., 5/15/18), recommending legislation striking at this practice; Commercial Bribery (S. Doc. unnumbered, 65th, .16 p., o. p., 8/22/18); and Commercial Bribery (S. Doc. 258, 66th, 7 p., o. p., 3/18/20).

Commercial Cooking and Food and Plate Warming Equipment, Manufacturers of (W. P. B.), Wartime, 1942-43.—The Commission conducted an investigation for the War Production Board to determine whether manufacturers of commercial cooking and plate warming equipment were complying with W. P. B. Limitation Orders L-182 and L-182 as amended 3/2/43; Conservation Orders M-126 and M-9-c, as amended; and Priorities Regulation No. 1.

Concentration of Productive Facilities (F. T. C.).—In a study of the extent of concentration of economic power, the Commission reported that 46 percent of the total net capital assets of all manufacturing corporations in the United States in 1947 was concentrated in the 113 largest manufacturers. The report is entitled The Concentration of Productive Facilities, 1947—Total Manufacturing and 26 Selected Industries (90 p.). See also Divergence between Plant and Company Concentration.

Contractors, Prime, Forward Buying Practices of (W. P. B.), Wartime, 1942-43.—The matter of procurement, use, and inventory stocks of critical materials involved in the operation of major plants devoting their efforts to war production was inquired into for the information of the War Production Board. Items such as accounting, inventory, control, purchase, practices, etc., formed a part of the inquiry.

Cooperation in American Export Trade.—See Foreign Trade.

Cooperation in Foreign Countries (F. T. C.).—Inquiries made by the Commission regarding the cooperative movement in 15 European countries resulted in a report, Cooperation in Foreign Countries (S. Doc. 171, 68th, 202 p., o. p., 11/29/24), recommending further development of cooperation in the U. S.

Cooperative Marketing (Senate).—This inquiry (S. Res. 34, 69th, 3/17/25) covered the development of the cooperative movement in the U. S. and illegal interferences with the formation and operation of cooperatives; and a comparative study of costs, prices, and marketing methods (Cooperative Marketing, S. Doc. 95, 70th, 721 p., o. p., 4/30/28).

Copper.—See Wartime Cost Finding, 1917-18.

Copper Base Alloy Ingot Makers (W. P. B.), Wartime, 1942-43. This investigation was designed to ascertain the operations, shipments, and inventories of copper, copper alloys, copper scrap, and copper base alloy ingot makers and was conducted for the purpose of determining the extent to which they were complying with governing W. P. B. Preference and Conservation Orders M-9-a and b, and M-9-c.

Copper Industry (F. T. C.).—The Commission's report on The Copper Industry transmitted to Congress (3/11/47), as in two parts: Part I—The Copper Industry of the United States and International Copper Cartels, and Part II—Concentration and Control By the Three Dominant Companies. The Commission reported that "The copper situation is particularly serious, not only because of the concentration of control of the ore reserves and of the productive capacity, but also because the domestic supply is inadequate to meet the demands of high level national production and employment. Furthermore, the production of foreign copper, on which the United States will become increasingly dependent, is likewise dominated by a few corporate groups which in the past have operated cooperatively in cartels to regulate production and prices."

Copper, Primary Fabricators of (W. P. B.), Wartime, 1941-42.—A survey and inspection of a specified list of companies which used a large percentage of all refinery copper allocated, and at the same time represented a fair cross-section of the industry, were made to ascertain the degree of compliance accorded to preference, supplementary, and conservation orders and regulations of the Director of Priorities, Office of Production Management (later the War Production Board).

Corporation Reports.—See Industrial Financial Reports.

Corporate Mergers and Acquisitions (F. T. C.).—To determine the impact on the Nation's economy of corporate mergers and acquisitions, the Commission made a study of the merger movement for the years 1940-46, inclusive. The results of the study were transmitted to Congress in a report entitled The Present Trend of Corporate Mergers and Acquisitions (23 p., 3/7/47), which showed, among other things, that during the period covered, more than 1,800 formerly independent competitive firms in manufacturing and mining industries alone had disappeared as a result of mergers or acquisitions, and that more than one third of the total number of acquisitions occurred in only three industries, food, nonelectrical machinery, and textiles and apparel—all predominantly "small business" fields. (See also Mergers.)

Cost Accounting.—See Accounting Systems.

Cost of Living (President), Wartime, 1917-18.—Delegates from the various States met in Washington, April 30 and May 1, 1917, at the request of the Federal Trade Commission, and considered the rapid rise of wartime prices and the plans then being made for the Commission's general investigation of foodstuffs. [See Foods (President), Wartime, 1917-18, herein.] Proceedings of the conference were published (High Cost of Living, 119 p., o. p.).

Cost of Living (President).—President Roosevelt, in a published letter (11/16/37), requested the Commission to investigate living costs. The Commission (11/20/37) adopted a resolution undertaking the inquiry and a few months thereafter submitted a confidential report to the President.

Costume Jewelry, Manufacturers of (W. P. B.), Wartime, 1943 44.—Because it appeared that vast quantities of critical metals were being diverted illegally from war use to the manufacture of costume jewelry and similar items, the War Production Board requested the Commission to investigate 45 manufacturers to ascertain the facts concerning their compliance with W. P. B. Orders M-9-a, M-9-b, M-9-c, M-9-c-2, M-43, M-38, M-11, M-11-b, M-126, L-81, L-131, and L-131-a, all as amended.

Cotton Industry.—See Textiles.

Cottonseed Industry (House).—Investigating alleged price fixing (H. Res. 439, 69th, 3/2/27), the Commission reported evidence of cooperation among State associations but no indication that cottonseed crushers or refiners had fixed prices in violation of the antitrust laws (Cottonseed Industry, H. Doc. 193, 70th, 37 p., 3/5/28).

Cottonseed Industry (Senate).—Two resolutions (S. Res. 136, 10/21/29, and S. Res. 147, 11/2/29 71st) directed the Commission to determine whether alleged unlawful combinations of cottonseed oil mill corporations sought to lower and fix prices of cottonseed and to sell cottonseed meal at a fixed price under boycott threat; and whether such corporations acquired control of cotton gins to destroy competitive markets and depress or control prices paid to seed producers (investigation of the Cottonseed Industry, preliminary report, S. Doc. 91, 71st, 4 p., o. p., 2/28/30, and final report, 207 p., with 11 vols. testimony, S. Doc. 209, 71st, 5/19/33).

Distribution Cost Accounting (F. T. C.).—To provide a guide for current legislation and determine ways for improving accounting methods, the Commission studied distribution cost accounting in connection with selling, warehousing, handling, delivery, credit and collection (Case Studies in Distribution Cost Accounting for Manufacturing and Wholesaling, H. Doc. 287, 77th, 215 p., o. p., 6/23/41).

Distribution.—See Millinery Distribution.

Distribution Methods and Costs (F. T. C.).—This inquiry into methods and costs of distributing important consumer commodities (F. T. C. Res., 6/27/40) was undertaken by the Commission pursuant to authority conferred upon it by section of the F. T. C. Act. Eight parts of the F. T. C. Report on Distribution Methods and Costs were transmitted to Congress and published under the subtitles: Part I, Important Food Products (11/11/43, 223 p., o. p.); Part III, Building Materials—Lumber, Paints and Varnishes, and Portland Cement (2/19/44, 50 p., o. p.); Part IV, Petroleum Products, Automobiles, Rubber Tires and Tubes, Electrical Household Appliances and Agricultural Implements (3/2/44, 189 p., o. p.); Part V, Advertising as a Factor in Distribution (10/30/44, 50 p., o. p.); Part VI, Milk Distribution, Prices, Spreads and profits (6/18/45, 58 p.); Part VII, Cost of Production and Distribution of Fish in the Great Lakes Area (6/30/45, 59 p.); Part VII, Cost of Production and Distribution of Fish in New England (6/30/45, 118 p.); and Part IX, Cost of Production and Distribution of Fish on the Pacific Coast (7/25/46, 82 p.). The inquiries relating to fish were conducted in cooperation with the Coordinator of Fisheries, Interior Department. During World War II special reports on the distribution of some 20 commodity groups were made for confidential use of the Office of Price Administration and other war agencies.

Divergence between Plant and Company Concentration (F. T. C.).—in this 1950 report, the Commission measured the divergence between plant and company concentration for each of 340 manufacturing industries. The Divergence between Plant and Company Concentration, 1947 (162 p.). See also Concentration of Productive Facilities.

Du Pont Investments (F. T. C.).—The Report of the F. T. C. on Du Pont Investments (F. T. C motion 7/29/27; report, 46 p., processed, 2/1/29) discussed reported acquisition by E. I. du Pont de Nemours & Co. of U. S. Steel Corp. stock, together with previously reported holdings In General Motors Corp.

Electric and Gas Utilities, and Electric Power.—See Power.

Electric Lamp Manufacturers (W. P. B.), Wartime, 1942-43.—At the direction of the War Production Board, an investigation was made of the activities of manufacturers of portable electric lamps whose operations were subject to the restrictions imposed by W. P. B. Limitation and Conservation Orders L-33 and m-9-c.

Electrical Household Appliances.—See Distribution Methods and Costs.

Farm Implements (Senate), Wartime, 1917-18.—The Report of the F. T. C. on the Causes of High Prices of Farm Implements (inquiry under S. Res. 223, 65th, 5/13/18; report, 713 p., o. p., 5/4/20) disclosed numerous trade combinations for advancing prices and declared the consent decree for dissolution of International Harvester Co. to be inadequate. The Commission recommended revision of the decree and the Department of Justice proceeded to that end.

Farm Implements (F. T. C.).—A 1948 report on the Manufacture and Distribution of Farm Implements (160 p., also 8 p. processed summary) concerns the production and distribution policies of large manufacturers of farm machinery. The report includes information respecting important developments and trends in the industry.

Feeds, Commercial (Senate).—Seeking to determine whether purported combinations in restraint of trade existed (S. Res. 140, 66th, 7/31/19), the Commission found that although some association activities were in restraint of trade, there were no substantial antitrust violations (Report of the F. T. C. on Commercial Feeds, 206 p., o. p., 3/29/21).

Fertilizer (Senate).—Begun by the Commissioner of Corporations ⁸ (S. Res. 487, 62d, 3/1/13), this inquiry disclosed extensive use of bogus independent fertilizer companies for competitive purposes (Fertilizer Industry, S. Doc. 551, 64th, 269 p., o. p., 8/19/16). Agreements for abolition of such unfair competition were reached.

Fertilizer (Senate).—A second fertilizer inquiry (S. Res. 307, 67th, 6/17/22) developed that active competition generally prevailed in that industry in the U. S., although in some foreign countries combinations controlled certain important raw materials. The Commission recommended improved agricultural credits and more extended cooperation by farmers in buying fertilizer (Fertilizer Industry, S. Doc. 347, 67th, 87 p., o. p. 3/3/23).

Fertilizer and Related Products (O. P. A.), Wartime, 1942-43.—At the request of O. P. A. (June 1942), the Commission investigated costs, prices, and profits in the fertilizer and related products industries. The inquiry developed information with reference to the operations of 12 phosphate rock mines of 11 companies, and 40 plants of 24 companies producing sulphuric acid, superphosphate, and mixed fertilizer. One of the principal requirements of the inquiry was to obtain information concerning costs, prices, and profits for 103 separate formulas of popular-selling fertilizers during 1941 and 1942.

Fertilizer (F. T. C.).—The Commission's 1949 report on the Fertilizer Industry (100 p.) is concerned primarily with restrictions and wastes which interfere with the supply of plant food materials in the quantities needed and at

⁸ The Commission was created September 26, 1914, upon passage of the Federal Trade Commission Act, sec. 3 of which provided that "all pending investigations and proceedings of the Bureau of Corporations (of the Department of Commerce) shall be continued by the Commission."

prices low enough to facilitate maintenance of soil fertility. The Nation's resources of nitrogen, phosphate, and potash are discussed, and the inter-relationships of producers and mixers are reviewed. The report also summarizes available information concerning cartel control of nitrogen, phosphates, and potash. Fish.—See Distribution Methods and Costs.

Flags (Senate), Wartime, 1917-18.—Unprecedented increases in the prices of U. S. flags in 1917, due to wartime demand, were investigated (S. Res. 35, 65th, 4/16/17). The inquiry was reported in *Prices of American Flags* (S. Doc. 82, 65th, 6 p., o. p., 7/26/17).

Flour Milling—See Food, below.

Food (President), Wartime, 1917-18.—President Wilson, as a wartime emergency measure (2/7/17), directed the Commission "to investigate and report the facts relating to the production, ownership, manufacture, storage, and distribution of foodstuffs" and "to ascertain the facts bearing on alleged violations of the antitrust acts." Two major series of reports related to meat packing and the grain trade with separate inquiries into flour milling, canned vegetables and fruits, canned salmon, and related matters, as listed below.

Food (President) Continued—Meat Packing.—Food Investigation-Report of the F. T. C. on the Meat-Packing Industry was published in six parts: I. Extent and Growth, of Power of the Five Packers in Meat and Other Industries (6/24/19, 574 p., o. p.); II. Evidence of Combination Among Packers (11/25/18, 294 p., o. p.); III. Methods of the Five Packers in Controlling the Meat-Packing Industry (6/28/19, 325 p., o. p.); IV. The Five Large Packers in Produce and Grocery Foods (6/30/19, 390 p., o. p.); V. Profits of the Packers (6/28/19, 110 p., o. p.); VI. Cost of Growing Beef Animals, Cost of Fattening Cattle, and Cost of Marketing Livestock (6/30/19, 183 p., o. p.); and summary (H. Doc. 1297, 65th, 51 p., o. p., 7/3/18).

The reports first led to antitrust proceedings against the Big Five Packers, resulting in a consent decree (Supreme Court of the D. C., 2/27/20),⁹ which had substantially the effect of Federal legislation in restricting their future operations to certain lines of activity. As a further result of the investigation, Congress enacted the Packers and Stockyards Act (1921), adopting the Commission's recommendation that the packers be divorced from control of the stockyards. (The meat-packing industry is further referred to under Meat Packing Profit Limitation, p. 150.)

Food (President) Continued—Grain Trade;—Covering the industry from country elevator to central market, the Report of the F. T. C. on the Grain Trade was published in seven parts: I. Country Grain Marketing (9/15/20, 350 p., o. p.); II. Terminal Grain Markets and Exchanges (9/15/20, 333 p., o. p.); III. Terminal Grain Marketing (12/21/21, 332 p., o. p.); IV. Middleman's Profits and Margins (9/26/23, 215 p., o. p.); V. Future Trading Operations in Grain (9/15/20 347 p., o. p.); VII. Effects of Future Trading (6/25/26, 419 p., o. p.). The investigation as reported in vol. V, and testimony by members of the Commission's staff (U. S. Congress House Committee on agriculture, Future Trading, hearings, 67th, April 2-May 2, 1921) was an important factor in enactment of the Grain Futures Act (1921). (Further reference to the grain trade is made under Grain Elevators, Grain Exporters, and Grain Wheat Prices, p. 149.)

Food (President) Continued—Bakeries and Flour Milling.—One F. T. C. report was published by the Food Administration (U. S. Food Administration, Report

⁹ The legal history of the consent decree and a summary of divergent economic interests involved in the question of packers participation in unrelated lines of food products were set forth by the Commission in *Packer Consent Decree* (S. Doc. 219, 68th, 44 p., o. p., 2/20/25), prepared pursuant to S. Res. 278, 68th, 12/8/24.

of the F. T. C. or Bakery Business in U. S., pp. 13, o. p., 1133/17). Other reports were: Food Investigation, Report of the F. T. C. on Flour Milling and Jobbing (4/4/18, 27 p., o. p.) and Commercial Wheat Flour Milling (9/15/20, 118 p., o. p.).

Food (President) Continued—Canned Foods,¹⁰ Private Car Lines, Wholesale Food Marketing.— Under the general title Food Investigation were published Report of the F. T. C. on Canned Foods—General Report and Canned Vegetables and Fruits (5/18/18, 103 p., o. p.); Report of the F. T. C. on Canned Foods— Canned Salmon (12/27/18, 83 p., o. p.); Report of the F. T. C. on Private Car Lines, regarding transportation of meats, fruits, and vegetables (6/27/19, 271 p., o. p.); and Report of the F. T. C. on Wholesale Marketing of Food (6/30/19, 268 p., o. p.), which recommended that a wholesale dealer in perishable food products should be required to procure a Federal license and that Federal inspection and standards should be provided. Provisions in accordance with these recommendations were incorporated in the Perishable Agricultural Commodities Act (1930).

Food—Biscuits and Crackers (O. P. A.), Wartime, 1942-43.— As requested by the Office of Price Administration, the Commission investigated costs and profits in the biscuit and cracker manufacturing industry and submitted its report to that agency 3/25/43. The survey of 43 plants operated by 25 companies showed, among other things, that costs were lower and profits higher for the larger companies than for the smaller ones.

Food—Bread Baking (O. E. S.), Wartime, 1942-43.— This investigation was requested (10/23/42) by the Director of the Office of Economic Stabilization and was conducted to determine what economies could be made in the bread-baking industry so as to remove the need for a subsidy for wheat, to prevent an increase in bread prices, or to lower the price of bread to consumers. Essential information on more than 600 representative bakeries' practices, costs, prices, and profits was developed and reported to O. E. S. (12/29/42). The report also was furnished to the Secretary of Agriculture and special data gathered in the inquiry were tabulated for O. P. A.

Food—Bread Baking (O. P. A.), Wartime, 1941-42.— In the interest of the low-income consumer, for whom it was deemed necessary the price of bread should be held at a minimum, the Commission investigated costs, prices, and profits of 60 representative bread-baking companies, conveying its findings to O. P. A. (Jan. 1942) in an unpublished report.

Food—Bread and Flour (Senate).—Reports on this inquiry (S. Res. 163, 68th, 2/26/24) were: Competitive Conditions in Flour Milling (S. Doc. 97, 70th, 140 p., o. p., 5/3/26); Bakery Combines and Profits (S. Doc. 212, 69th, 95 p., 2/11/27); Competition and Profits in Bread and Flour (S. Doc. 98, 70th, 509 p., o. p., 1/11/28); and Conditions in the Flour Milling Business, supplementary (S. Doc. 96, 72d, 20 p., o. p., 5/28/32).

Food—Wholesale Baking Industry (F. T. C.).—This inquiry (F. T. C. Res., 8/31/45) resulted in two reports to Congress: Wholesale Baking Industry, Part I—Waste in the Distribution of Bread (4/22/46, processed, 29 p.) and Wholesale Baking industry, Part II—Costs, Prices and Profits (8/7/46, 137 p.). Part I developed facts concerning wasteful and uneconomic practices in the distribution of bread, including consignment selling which involves the taking back of unsold bread; furnishing, by gift or loan, bread racks, stands, fixtures, etc., to induce distributors to handle a given company's products. It was found that,

¹⁰ In connection with its wartime cost finding inquiries, 1917-18, p. 162 herein, the Commission published Report of the F. T. C. on Canned Foods 1918— Corn, Peas, String Beans, Tomatoes, and Salmon (86 p., 11/21/21).

although War Food Order No. 1 which prohibited these practices was only partially observed, in 1945 as compared with 1942, the quantity of bread saved was sufficient to supply the population of England, Scotland, and Wales with a daily ration of one-third of a loaf for 30 days, the population of France for 36 days, or the population of Finland for nearly 1 year. The Commission suggested that "a careful examination of present laws be made by the legislative and executive branches of the Government to determine what legislation, if any, is needed to permanently eliminate wasteful trade practices and predatory competition which threaten the existence of many small bakers, foredoom new ventures to failure and promote regional monopolistic control of the wholesale breadbaking industry."

Part II presents information concerning prices and pricing practices in the industry, profits earned, and unit costs of production and distribution. It compares the details of production and distribution costs for bread and rolls, other bakery products, and for all bakery products for two operating periods in 1945, March and September. Comparisons of costs are also made for these two periods for plants arranged by geographical areas. Comparisons of the costs of production and distribution are made by size groups of wholesale bakeries.

Food—Fish.—See Distribution Methods and Costs.

Food—Flour Milling (Senate).—This study of costs, profits, and other factors (S. Res. 912, 67th, 1/18/22) was reported in Wheat Flour Milling Industry (S. Doc. 130, 68th, 130 p., o. p., 5/16/24).

Food—Flour Milling (O. E. S.), Wartime, 1942-43.—Requested by the Director of the Office of Economic Stabilization, this inquiry covered practices, costs, prices, and profits in the wheat flour-milling industry, its purpose being to provide the Director with facts to determine what economies could be affected in the industry so as to eliminate the need for a wheat subsidy, without reducing farmers' returns, or to reduce bread prices. The report was made to O. E. S. and a more detailed report was prepared for O. P. A.

Food—Flour-Milling Industry, Growth and Concentration in (F. T. C.).—The Commission's study showed that there has been a progressive increase in the size of flour-mill operations and a progressive decrease in the number of flour-milling establishments. Nevertheless, the Commission reported, there is a lesser degree of concentration in the flour-milling industry than in many other important industries. The results of the study were presented to Congress in a report on the Growth and Concentration in the Flour-Milling Industry (6/2/47).

Food—Grain Elevators (F. T. C.), Wartime, 1917-18.—In view of certain bills pending before Congress with reference to regulation of the grain trade, the Commission, in a preliminary report, Profits of Country and Terminal Grain Elevators (S. Doc. 40, 67th, 12 p., o. p., 6/13/21) presented certain data collected during its inquiry into the grain trade ordered by the President.

Food—Grain Exporters (Senate).—The low prices of export wheat in 1921 gave rise to this inquiry (Sen. Res. 133, 67th, 12/22/21) concerning harmful speculative price manipulations on the grain exchanges and alleged conspiracies among country grain buyers to agree on maximum purchasing prices. The Commission recommended stricter supervision of exchanges and additional storage facilities for grain not controlled by grain dealers (Report of the F. T. C. on Methods and Operations of Grain Exporters, 2 vols., 387 p., o. p., 5/16/22 and 6/18/23).

Food—Grain, Wheat Prices (President).—An extraordinary decline of wheat prices was investigated (President Wilson's directive 10/12/20) and found to be due chiefly to abnormal market conditions (Report of the F. T. C. on Wheat Prices for the 1920 Crop, 91 p., o. p., 12/13/20).

Food—Important Food Products.—See Distribution Methods and Costs.

Food—Meat Packing Profit Limitation (Senate), Wartime, 1917-18.—Following an inquiry (S. Res. 177, 66th, 9/3/19) involving wartime control of this business as established by the U. S. Food Administration in 1917-18, the Commission recommended greater control and lower maximum profits (Maximum Profit Limitation on Meat Packing Industry, S. Doc. 110, 66th, 179 p., o. p., 9/25/19).

Food—Milk.—See Distribution Methods and Costs.

Food—Milk and Milk Products (Senate), Wartime, 1917-18.—Covering an inquiry (S. Res. 431, 65th, 3/3/19) into fairness of milk prices to producers and of canned-milk prices to consumers, the Report of the F. T. C. on Milk and Milk Products 1914-18 (6/21, 234 p., o. p.) showed a marked concentration of control and questionable practices many of which later were recognized by the industry as being unfair.

Food—Milk and Dairy Products (House).—Competitive conditions in different milk-producing areas were investigated (H. Con. Res. 32, 73d, 6/15/34). Results of the inquiry were published in seven volumes: Report of The F. T. C. on the Sale and Distribution of Milk Products, Connecticut and Philadelphia Milksheds (H. Doc. 152, 74th, 901 p., o. p., 4/5/35); Report of the F. T. C. on the Sale and Distribution of Milk and Milk Products (Connecticut and Philadelphia milksheds, interim report, H. Doc. 387, 74th, 125 p., o. p., 12/31/35); Chicago Sales Area (H. Doc. 451, 74th, 103 p., o. p., 4/15/36); Boston, Baltimore, Cincinnati, St. Louis (H. Doc. 501, 74th, 243 p., o. p., 6/4/36); Twin City Sales Area (H. Doc. 506, 74th, 71 p., o. p., 6/13/36); and New York Milk Sales Area (H. Doc. 95, 75th, 138 p., o. p., 9/30/36). The Commission reported that many of the industry's problems could be dealt with only by the States and recommended certain legislation and procedure, both State and Federal (Summary Report on Conditions with Respect to the Sale and Distribution of Milk and Dairy Products, H. Doc. 94, 75th, 39 p., o. p., 1/4/37). Legislation has been enacted in a number of States carrying into effect all or a portion of the Commission's recommendations.

Food—Peanut Prices (Senate).—An alleged price-fixing combination of peanut crushers and mills was investigated (S. Res. 139, 71st, 10/22/29). The Commission found that an industry-wide decline in prices of farmers' stock peanuts during the business depression was not due to such a combination, although pricing practices of certain mills tended to impede advancing and to accelerate declining prices (Prices and competition Among Peanut Mills, S. Doc. 132, 72d, 78 p., o. p., 6/30/32).

Food—Raisin Combination (Attorney General).—Investigating allegations of a combination among California raisin growers (referred to F. T. C. 9/30/19), the Commission found the enterprise not only organized in restraint of trade but conducted in a manner threatening financial disaster to the growers. The Commission recommended charges which the growers adopted (California Associated Raisin Co., 26 p., processed, o. p., 6/8/20).

Food—Southern Livestock Prices (Senate).—Although the low prices of southern livestock in 1919 gave rise to a belief that discrimination was being practiced, a Commission investigation (S. Res. 133, 66th, 7/25/19) revealed the alleged discrimination did not appear to exist (Southern Livestock Prices, S. Doc. 209, 66th, 11 p., o. p., 2/2/20).

Food—Sugar (House).—An extraordinary advance in the price of sugar in 1919 (H. Res. 150, 66th, 10/1/19) was found to be due chiefly to speculation and hoarding. The Commission made recommendations for correcting these abuses (Report of the F. T. C. on Sugar Supply and Prices, 205 p., 11/15/20).

Food—Sugar, Beet (F. T. C.).—Initiated by the Commissioner of Corpora-

tions,¹¹ but completed by the F. T. C., this inquiry dealt with the cost of growing beets and the cost of beet-sugar manufacture (Report of the Beet Sugar Industry in the U. S., H. Doc. 158, 65th, 164 p., o. p., 5/24/17).

Foreign Trade—Antidumping Legislation (F. T. C.).—To develop information for use of Congress in its consideration of amendments to the antidumping laws, the Commission studied recognized types of dumping and provisions for preventing the dumping of goods from foreign countries (Antidumping Legislation and Other Import Regulations in the United States and Foreign Countries, S. Doc. 112, 73d, 100 p., o. p., 1/11/34; supplemental report, 111 p., o. p., processed, (6/27/38).

Foreign Trade—Cooperation in American Export Trade (F. T. C.).—This inquiry related to competitive conditions affecting Americans in international trade. The Export Trade Act, also known as the Webb-Pomerene law, authorizing the association of U. S. manufacturers for export trade; was enacted as a result of Commission recommendations (Cooperation in American export Trade, 2 vols., 984 p., o. p., 6/30/16; also summary, S. Doc. 426, 64th, 7 p., o. p., 5/2/16; and conclusions 1916. 14 p., o. p.).

Foreign Trade—Cotton Growing Corporation (Senate).—The report of an inquiry (S. Res. 317, 68th, 1/27/25) concerning the development of this British company, Empire Cotton Growing Corporation (S. Doc. 226, 68th, 30 p., o. p., 2/28/25), showed there was then little danger of serious competition with the American grower or of a possibility that the United States would lose its position as the largest producer of raw cotton.

Fruit Growers and Shippers (W. P. B.), Wartime, 1943-44.—This investigation was requested by the War Production Board to determine whether 7 grape growers and 12 grape shippers, all located in California, were in violation of W. P. B. Order L-232 with respect to quotas affecting the use of lugs (wooden shipping containers).

Furnaces, Hot Air, Household (W. P. B.), Wartime, 1943-44.—The Commission made a Nation-wide survey for the War Production Board of the operations of one of the largest manufacturers in the United States of household hot air furnaces, to determine whether its practices in selling and servicing domestic heating plants were in violation of Orders L-79 and P-84, and other applicable regulations and orders of W. P. B.

Fuse Manufacturers (W. P. B.), Wartime, 1942-43.—For the War Production Board the Commission investigated and reported on the activities of representative fuse manufacturers whose operations were subject to W. P. B. Limitation Orders L-158 and L-161, as amended.

Gasoline.—See Petroleum.

Glycerin, Users of (W. P. B.), Wartime, 1942-43.—At the request of the War Production Board, paint and resin manufacturers, tobacco companies, and other large users of glycerin were investigated to determine whether they had improperly extended preference ratings to obtain formaldehyde, paraformaldehyde, or hexamethylenetetramine, to which they were not otherwise entitled.

Grain.—See Food.

Grain Exchange Actions (F. T. C. and Chairman of Senate Committee on Agriculture and Forestry).—The Commission's report on Economic Effects of Grain Exchange Actions Affecting Futures Trading During the First Six Months of 1946 (85 p., 2/4/47) presents results of a special study made at the request of the then Chairman of the Senate Committee on Agriculture and Forestry. The report reviews the factors which made it impossible, during the first half of

¹¹ See footnote 8, p. 146.

1946, for futures trading to be conducted in the usual manner on the Chicago, Kansas City and Minneapolis grain exchanges under existing conditions of Government price control and severe restrictions on the movement of short supplies of free grain in the cash market. The report also discusses the economic effects of emergency actions taken by the exchanges on the interests trading in futures, and suggests, among other things, that both the Commodity Exchange Act and the U. S. Warehouse Act "should be so amplified and coordinated, or even combined, as to make effective the type and scope of regulation over futures trading contemplated by the Congress in enacting the Commodity Exchange Act."

Guarantee Against Price Decline (F. T. C.).—Answers to a circular letter (12/26/19) calling for information and opinions on this subject were published in Digest of Replies in Response to an Inquiry of the F. T. C. Relating to the Practice of Giving Guarantee Against Price Decline (68 p., o. p., 5/27/20).

Housefurnishings (Senate).—This inquiry (S. Res. 127, 67th, 1/4/22) resulted in three volumes showing concerted efforts to effect uniformity of prices in some lines (Report of the F. T. C. on Housefurnishing Industries, 1018 p., o. p., 1/17/23, 10/1/23, and 10/6/24).

Household Furniture (O. P. A.), Wartime, 1941-42.—Costs, prices, and profits of 67 representative furniture companies were studied to determine whether, and to what extent, price increases were justified. A study was also made to determine whether price-fixing agreements existed and whether wholesale price increases resulted from understandings in restraint of trade. Confidential reports were transmitted to O. P. A. in Sept. 1941.

Independent Harvester Co. (Senate), Wartime, 1917-18.—After investigation (S. Res. 212, 65th, 3/11/18) of the organization and methods of operation of the company which had been formed several years before to compete with the "harvester trust," but which had passed into receivership, the F. T. C. Report to the Senate on the Independent Harvester Co. (5 p., release, processed, o. p., 5/15/18) showed the company's failure was due to mismanagement and insufficient capital.

Industrial Financial Reports (F. T. C. and S. E. C.).—This (1947-51) series of reports is intended to meet the general needs of the Government and the public for current reliable corporation financial data. The reports show the aggregate estimates for American manufacturing corporations as derived from reports collected by the Federal Trade Commission and the Securities and Exchange Commission. This work is based upon resumption by F. T. C. of its prewar financial reporting function and continuation by S. E. C. of its current responsibilities for collection of financial information from corporations with securities registered on a national exchange. F. T. C. obtains comparable information from a carefully selected sample of small, medium size and large nonregistered corporations. The sample has been designed so that the two sets of data can be combined to provide estimates for 21 major industry groups as well as the aggregate for all manufacturing corporations. The Industrial Financial Reports formerly were known as Industrial Corporation Reports. A summary appears at p. 21.

Insignia Manufacturers (W. P. B.), Wartime, 1944-45.—Preliminary studies made by the War Production Board disclosed the probability that certain insignia manufacturers had acquired larger quantities of foreign silver than necessary to fill legitimate orders and diverted the balance to unauthorized uses. In response to W. P. B.'s request the Commission surveyed the acquisition and use of foreign silver by such manufacturers to determine the degree of their compliance with Order M-199 and checked the receipt and use of both domestic and treasury silver, as well as the manufacture of insignia, as controlled by Orders L-131 and M-9-c.

Interlocking Directorates (F. T. C.).—This 1950 report on Interlocking Directorates summarizes the interlocking relationships among directors of the 1,000 largest manufacturing corporations. It also covers the interlocking directorates between these corporations and a selected list of banks, investment trusts, insurance companies, railroads, public utilities, and distributive enterprises.

International Alkali Cartels (F. T. C.).—In a report (1950) on International Cartels in the ALKALI Industry, the Commission discussed the nature, extent, and effect of international agreements concerning baking soda, soda ash, and caustic soda to which organized groups of American and European alkali producers were parties from 1924 until 1946.

International Electrical Equipment Cartel (F. T. C.).—In its 1948 report on this subject (107 p., also 10 p. processed summary) the Commission points out the high degree of economic concentration in the electrical equipment industry which exists in each of the important industrial nations.

International Phosphate Cartels (F. T. C.).—The F. T. C. Report on International Phosphate Cartel (F. T. C. Res. 9/19/44) developed facts with respect to the practices, arrangements and agreements between domestic phosphate companies and foreign competitors through international cartels, through which minimum export prices were fixed. These prices varied from market to market, depending upon competition, ocean freight rates, and other factors. The agreements established fixed quotas in each grade, and sales were allocated among members of the Phosphate Export Association according to their quotas and the grade involved. The report (processed, 60 p.) was transmitted to Congress 5/1/46.

International Steel Cartels (F. T. C.).—A report to Congress concerning numerous cartel agreements relating to steel which were adopted between World War I and World War II. Certain American companies participated in these agreements, which were both national and international in scope. The international agreements allotted quotas to the different national groups, fixed prices in the export trade, and established reserved and unreserved areas. (International Steel Cartels (1948), 115 p., also 12 p. processed summary.)

Jewel Bearings, Consumers of (W. P. B.), Wartime, 1942-43.—For the War Production Board, users of jewel bearings were investigated to determine the extent to which they were complying with W. P. B. Conservation Order m-50, which had been issued to conserve the supply and direct the distribution of jewel bearings and jewel-bearing material.

Large Manufacturing Companies (F. T. C.).—This 1951 report, entitled A List of 1,000 Large Manufacturing Companies, Their Subsidiaries and Affiliates, 1948, shows for each of the 1,000 largest manufacturing corporations which publish financial statements the percentage of stock interest held by the corporation each of its subsidiaries and affiliates. The parent corporations are grouped in 21 major industries and ranked as to size on the basis of their total assets in 1948.

Leather and Shoes (F. T. C. and House), Wartime, 1917-18.—General complaint regarding high prices of shoes led to this inquiry, which is reported in Hide and Leather Situation, preliminary report (H. Doc. 857, 65th, 5 p., o. p., 1/23/18), and Report on Leather and Shoe Industries (180 p., o. p., 8/21/19). A further study H. Res. 217, 66th, 8/19/19) resulted in the Report of the F. T. C. on Shoe and Leather Costs and Prices (212 p., o. p., 6/10/21).

Lumber—Costs.—See Wartime Cost Finding, 1917-18.

Lumber Trade Associations (Attorney General).—The Commission's extensive survey of lumber manufacturers' associations (referred to F. T. C., 9/4/19) resulted in Department of Justice proceedings against certain associations for alleged antitrust law violations. Documents published were: Report of the

F. T. C. on Lumber Manufacturers' Trade Associations, incorporating regional reports of 1/10/21, 2/18/21, 6/9/21, and 2/15/22 (150 p., o. p.); Report of the F. T. C. on Western Red Cedar Association, Lifetime Post Association, and Western Red Cedarmen's Information Bureau (22 p., o. p., 1/24/23), also known as Activities of Trade Associations and Manufacturers of Posts and Poles in the Rocky Mountain and Mississippi Valley Territory (S. Doc. 293, 67th, o. p.); and Report of the F. T. C. on Northern Hemlock and Hardwood Manufacturers Association (52 p., o. p., 5/7/23).

Lumber Trade Associations (F. T. C.).—Activities of five large associations were investigated in connection with the Open-Price Associations inquiry to bring down to date the 1919 lumber association inquiry (Chap. VIII of Open-Price Trade Associations, S. Doc. 226, 70th, 516 p., 2/13/29).

Meat-Packing Profit Limitations.—See Food.

Mergers (F. T. C.).—In its 1948 report entitled *The Merger Movement: A Summary Report* (134 p., also 7 p. processed summary) the legal history of the antimerger provisions of the Clayton Act is reviewed. The report called attention to the loophole in the Clayton Act which permitted corporations to purchase the assets rather than (or in addition to) the stock of competing firms, thereby evading the original intent of Congress "to arrest the creation of . . . monopolies in their incipiency." (See also *Corporate Mergers*.)

Metal-Working Machines, Invoicing and Distribution of (W. P. B.), Wartime, 1942-43.—For the War Production Board an inquiry was made to obtain complete data from the builders of metal-working machines (including those manufactured by their subcontractors) such as all nonportable power-driven machines that shape metal by progressively removing chips or by grinding, boning, or lopping; all nonportable power-driven shears, presses, hammers, bending machines, and other machines for cutting, trimming, bending, forging, pressing, and forming metal; and all power-driven measuring and testing machines. Each type and kind of machine was reported on separately.

Milk.—See Food.

Millinery Distribution (President).—This inquiry, requested by President Roosevelt, embraced growth and development of syndicates operating units for retail millinery distribution, the units consisting of leased departments in department or specialty stores (Report to the President of the United States on Distribution Method in the Millinery Industry, 65 p., processed, 11/21/39).

Motor Vehicles (Congress).—Investigating (Public Res. 87, 75th, 4/13/38) distribution and retail sales policies of motor vehicle manufacturers and dealers, the Commission found, among other things, a high degree of concentration and strong competition; that many local dealers' associations fixed prices and operated used-car valuation or appraisal bureaus essentially as combinations to restrict competition; that inequities existed in dealer agreements and in certain manufacturers' treatment of some dealers; and that some companies' car finance plans developed serious abuses (*Motor Vehicle Industry*, H. Doc. 468, 76th, 1077 p., 0/5/39). The leading companies voluntarily adopted a number of the Commission's recommendations as company policies.

National Wealth and Income (Senate).—In 1922 the national wealth was estimated (inquiry pursuant to S. Res. 451, 67th, 2/28/23) at \$353,000,000,000 and the national income in 1923 at \$70,000,000,000 [*National Wealth and Income* (S. Doc. 126, 69th, 381 p., o. p., 5/25/26) and *Taxation and Tax-Exempt Income* (S. Doc. 148, 68th, 144 p., o. p., 6/6/24)].

Nickel Processors (W. P. B.), Wartime, 1942-43.—The Commission was designated by the War Production Board to investigate the transactions of some 600 nickel processors for the purpose of determining the extent to which they were

complying with W. P. B. Preference Order No. M-6-a, issued 9/30/41, and Conservation Order M-6-b, issued 1/20/42. The investigation was conducted concurrently with a survey of chromium processors.

Open-Price Associations (Senate).—An investigation (S. Res., 28, 69th, 3/17/25) to ascertain the number and names of so-called open-price associations, their importance in industry and the extent to which members maintained uniform prices, was reported in Open-Price Trade Association (S. Doc. 226, 70th, 516 p., 2/13/29). Consistency

Packer Consent Decree.—See Food (President) Continued—Meat Packing.

Paint, Varnish, and Lacquer Manufacturers (W. P. B.), Wartime, 1943-44.—The purpose of this survey was to determine whether the manufacturers covered were in violation of War Production Board Orders M-139, M-150, M-159, M-246, and M-327 in their acquisition and use of certain chemicals, all subject to W. P. B. allocations, used in the manufacture of paint, varnish, and lacquer. Sales of such products to determine their end uses also were investigated.

Paperboard (O. P. A.), Wartime, 1941-42.—Costs, profits, and other financial data regarding operations of 68 paperboard mills (O. P. A. request, 11/12/41) for use in connection with price stabilization work, were transmitted to O. P. A. in a confidential report (May 1942).

Paper—Book (Senate), Wartime, 1917-18.—This inquiry (S. Res. 269, 64th, 9/7/16) resulted in proceedings by the Commission against certain manufacturers to prevent price enhancement and the Commission recommended legislation to repress trade restraints [Book Paper Industry—Preliminary Report (S. Doc. 45, 65th, 11 p., o. p., 6/13/17), and Book Paper Industry—Final Report (S. Doc. 79, 65th, 125 p., o. p., 8/21/17)].

Paper—Newsprint (Senate), Wartime, 1917-18.—High prices of newsprint (S. Res. 177, 64th, 4/24/16) were shown to have been partly a result of certain newsprint association activities in restraint of trade. Department of Justice proceedings resulted in abolishment of the association and indictment of certain manufacturers. The Commission for several years conducted monthly reporting of production and sales statistics, and helped provide some substantial relief for smaller publishers in various parts of the country. [Newsprint Paper Industry, preliminary (S. Doc. 3, 65th, 12 p., o. p., 3/3/17; Report of the F. T. C. on the Newsprint Paper Industry (S. Doc. 49, 65th) 162 p., o. p., 6/13/17); and Newsprint Paper Investigation (in response to S. Res. 95, 65th, 6/27/17; S. Doc. 61, 65th, 8 p., o. p., 7/10/17)].

Paper—Newsprint (Senate).—The question investigated (S. Res. 337, 70th, 2/27/29) was whether a monopoly existed among newsprint manufacturers and distributors in supplying paper to publishers of small dailies and weeklies (Newsprint Paper Industry, S. Doc. 214, 71st, 116 p., 6/30/30).

Paper—Newsprint (Attorney General).—The Commission investigated (inquiry referred to F. T. C. 1/24/38) the manner in which certain newsprint manufacturers complied with a consent decree entered against them (11/26/17) by the U. S. District Court, Southern District of New York.

Peanut Prices.—See Food.

Petroleum Products.—See Distribution Methods and Costs.

Petroleum and Petroleum Products, Prices (President and Congress).—At different times the Commission has studied prices of petroleum and petroleum products and issued reports thereon as follows: Investigation of the Price of Gasoline, preliminary (S. Doc. 403, 64th, 15 p., o. p., 4/10/16) and Report on the Price of Gasoline in 1915 (H. Doc. 74, 65th, 224 p., o. p., 4/11/17—both pursuant to S. Res. 109, 63d, 6/18/13¹² and S. Res. 457, 63d, 9/28/14, which reports

¹² See footnote 8, p. 146.

discussed high prices and the Standard Oil Companies' division of marketing territory among themselves, the Commission suggesting several plans for restoring effective competition; Advance in the Prices of Petroleum Products (H. Doc. 801, 66th, 57 p., o. p., 6/1/20)—pursuant to H. Res. 501, 66th, 4/5/20, in which report the Commission made constructive proposals to conserve the oil supply; Letter of Submittal and Summary of Report on Gasoline Prices in 1924 (24 p. processed, 6/4/24, and Cong. Record, 2/28/25, p. 5158)—pursuant to request of President Coolidge, 2/7/24; Petroleum Industry—Prices, Profits and Competitions (S. Doc. 61, 70th, 360 p., o. p., 12/12/27)—pursuant to S. Res. 31, 69th, 6/3/36; Importation of Foreign Gasoline at Detroit, Mich. (S. Doc. 206, 72d, 3 p., o. p., 2/27/33)—pursuant to S. Res. 274, 72d, 7/16/32; and Gasoline Prices (S. Doc. 178, 73d, 22 p., o. p., 5/10/34)—pursuant to S. Res. 166, 73d, 2/2/34.

Petroleum Decree (Attorney General).—The Commission investigated (inquiry referred to F. T. C. 4/16/36) the manner in which a consent decree entered (4/16/30) against Standard Oil Co. of California, Inc., and others, restraining them from monopolistic practices, was being observed, and reported (4/2/37) to the Attorney General.

Petroleum—Foreign Ownership (Senate).—Inquiry was made (S. Res. 311, 67th, 6/29/22) into acquisition of extensive oil interests in the U. S. by the Dutch-Shell organization, and into discrimination allegedly practiced in foreign countries against American interests (Report of the F. T. C. on Foreign Ownership in the Petroleum Industry, 152 p., o. p., 2/12/23).

Petroleum Pipe Lines (Senate).—Begun by the Bureau of Corporations,¹³ this inquiry (S. Res. 109, 63d, 6/18/13) showed the dominating importance of the pipe lines of the great midcontinent oil fields and reported practices of the pipeline companies which were unfair to small producers (Report on Pipe-Line Transportation of Petroleum, 467 p., o. p., 2/28/16), some of which practices were later remedied by the Interstate Commerce Commission.

Petroleum—Regional Studies (Senate and F. T. C.).—Reports published were: Pacific Coast Petroleum Industry (two parts 4/7/21 and 11/28/21, 538 p.)—pursuant to S. Res. 138, 66th, 7/31/19; Reports of the F. T. C. on the Petroleum Industry of Wyoming (54 p., o. p., 1/3/21)—pursuant to F. T. C. motion; Petroleum Trade in Wyoming and Montana (S. Doc. 233, 67th, 4 p., o. p., 7/13/22)—pursuant to F. T. C. motion, in which report legislation to remedy existing conditions was recommended; and Report of the F. T. C. on Panhandle Crude Petroleum (Texas) (19 p., o. p., 2/3/28)—pursuant to F. T. C. motion, 10/6/26 (in response to requests of producers of crude petroleum).

Potomac Electric Power Co. (Procurement Director, United States Treasury).—A study (2/29/44) of the financial history and operations of this corporation for the years 1896-1943 was made at the request of the Director of Procurement, United States Treasury, and the report thereon was introduced into the record in the corporation's electric rate case before the District of Columbia Public Utilities Commission.

Power—Electric (Senate).—This inquiry (S. Res. 329, 68th, 2/9/25) resulted in two reports, the first of which, Electric Power Industry—Control of Power Companies (S. Doc. 213, 69th, 272 p., o. p., 2/21/27) dealt with the organization, control, and ownership of commercial electric-power companies. It called attention to the dangerous degree to which pyramiding had been practiced in superimposing a series of holding companies over the underlying operating companies, and was influential in bringing about the more comprehensive inquiry described

¹³ See footnote 8, p. 146. Conditions in one of the midcontinent fields were discussed by the Bureau of Corporations in Conditions in the Healdton Oil Field (Oklahoma) (116 p. 3/15/15).

under Power—Utility Corps., below. Supply of Electrical Equipment and Competitive Conditions (S. Doc. 46, 70th, 282 p., o. p., 1/12/28) showed, among other things, the dominating position of General Electric Co. in the equipment field.

Power—Interstate Transmission (Senate).—Investigation (S. Res. 151, 71st, 11/8/29) was made of the quantity of electric energy transmitted across State lines and used for development of power or light, or both (Interstate Movement of Electric Energy, S. Doc. 238, 71st, 134 p., o. p., 12/20/30).

Power—Utility Corporations (Electric and Gas Utilities) (Senate).—This extensive inquiry (S. Res. 83, 70th, 2/15/28; Public Res. 46, 73d, 6/1/34; and F. T. C. Act, Sec. 6 embraced the financial set-up of electric and gas utility companies operating in interstate commerce and of their holding companies and other companies controlled by the holding companies. The inquiry also dealt with the utilities' efforts to influence public opinion with respect to municipal ownership of electric utilities. The Commission's reports and recommendations, focusing congressional attention upon certain unfair financial practices in connection with the organization of holding companies and the sale of securities, were among the influences which brought about enactment of such remedial legislation as the Securities Act (1533), the Public Utility Holding Company Act (1935), the Federal Power Act (1935), and the Natural Gas Act (1938).

Public hearings were held on all phases of the inquiry and monthly interim reports presented hundreds of detailed studies by the Commission's economists, attorneys, accountants, and other experts, based on examination of 29 holding companies having \$6,108,128,713 total assets; 70 subholding companies with \$5,685,463,201 total assets; and 278 operating companies with \$7,245,106,464 total assets. The testimony, exhibits, and final reports (Utility Corporations, S. Doc. 92, 70th) comprised 95 volumes.¹⁴

Price Bases (F. T. C.).—More than 3,500 manufacturers representing practically every industrial segment furnished data for this study (F. T. C. motion, 7/27/27) of methods used for computing delivered prices on industrial products and of the actual and potential influence of such methods on competitive markets and price levels. In the cement industry the basing-point method¹⁵ was found to have a tendency to establish unhealthy uniformity of delivered prices and cross-hauling or cross-freighting to be an economic evil (Report of the F. T. C. on Price Bases Inquiry, Basing-Point Formula, and Cement Prices, 218 p., o. p., 3/26/32). Illustrating the use in a heavy commodity industry of both a modified zone-price system and a uniform delivered-price system, the Commission examined price schedules of the more important manufacturers of range boilers, 1932-36, disclosing that the industry operated under a zone-price formula, both before and after adoption of its N. R. A. code (Study of Zone-Price Formula in Range Boiler Industry, 5 p., processed, 3/30/36, a summary based on the complete report which was submitted to Congress but not printed).

Price Deflation (President).—To an inquiry (3/21/21) of President Harding, the Commission made prompt reply (undated) presenting its views of the causes of a disproportional decline of agricultural prices compared with consumers' prices (Letter of the F. T. C. to the President of the U. S., 8 p., o. p.).

Priorities (W. P. B.), Wartime, 1941-45.—Pursuant to Executive orders (January 1942), W. P. B. designated the Federal Trade Commission as an agency to conduct investigations of basic industries to determine the extent and degree to

¹⁴ Final reports were published in 1935; a general Index in 1937. Some of the volumes are out of print. For report titles, see F. T. C. Annual Report, 1941, p. 221: and for lists of companies investigated, see F. T. C. Annual Reports, 1935, p. 21, and 1936, p. 38.

¹⁵ Basing-point systems are also discussed in the published reports listed under "Cement," "Steel Code," and "Steel Sheet Piling" herein.

which they were complying with W. P. B. orders relative to the allocation of supply and priority of delivery of war materials. F. T. C. priorities investigations are listed herein under the headings: Aluminum, Foundries Using; Antifreeze Solutions, Manufacturers of; Capital Equipment, Chromium, Processors of; Commercial Cooking and Food and Plate Warming Equipment, Manufacturers of; Contractors, Prime, Forward Buying Practices of; Copper Base Alloy Ingot makers; Copper, Primary Fabricators of; Costume Jewelry, Manufacturers of; Electric Lamps, Manufacturers of; Fruit Growers and Shippers; Furnaces, Hot Air, Household; Fuse Manufacturers; Glycerin, Users of; Insignia Manufacturers; Jewel Bearings, Consumers of; Metal-working Machines, Invoicing and Distribution of; Nickel, Processors of; Paint, Varnish, and Lacquer, Manufacturers of; Quinine, Manufacturers and Wholesalers of; Silverware, Manufacturers of; Silverware Manufacturers and Silver Suppliers; Steel Industry; Textile Mills, Cotton; and Tin, Consumers of. The report on each of these investigations was made directly to W. P. B.

Profiteering (Senate), Wartime, 1917-18.—Current conditions of profiteering (S. Res. 255, 65th, 6/10/18) as disclosed by various Commission investigations were reported in Profiteering (S. Doc. 248, 65th, 20 p., o. p., 6/29/18).

Quinine, Manufacturers and Wholesalers of (W. P. B.), Wartime, 1942-43.—At the instance of the War Production Board, investigation was made to determine whether requirements of its Conservation Order No. m-131-a, relating to quinine and other drugs extracted from cinchona bark, were being complied with.

Radio (House).—A comprehensive investigation of the radio industry (H. Res. 548, 67th, 3/4/23; Report of the F. T. C. on the Radio Industry, 347 p., o. p., 12/1/23) contributed materially to enactment of the Radio Act of 1927 and the succeeding Federal Communications Act of 1934. The investigation was followed by Commission and Department of Justice proceedings on monopoly charges which culminated in a consent decree (11/2/32; amended, 11/2/35).

Rags, Woolen.—See Textiles.

Raisin Combination.—See Food.

Range Boilers.—See Price Bases.

Rates of Return in Selected Industries (F. T. C.).—A comparison of the prewar (World War II) and postwar rates of return on stockholders' investments after taxes for more than 500 identical manufacturing corporations. The study, covering the years 1940 and 1947-50, includes 25 selected manufacturing industries.

Resale Price Maintenance (F. T. C.).—The question whether a manufacturer of standard articles, identified by trade-mark or trade practice, should be permitted to fix by contract the price at which purchasers should resell them, led to the first inquiry, resulting in a report, Resale Price Maintenance (H. Doc. 1480, 65th, 3 p., o. p., 12/2/18). Other reports were: A Report on Resale Price Maintenance (H. Doc. 145, 66th, 3 p., 6/30/19) and Resale Price Maintenance (F. T. C. motion, 7/25/27; reports, Part I, H. Doc. 54G, 70th, 141 p., o. p., 1/30/29, and Part II, 215 p., 6/22/31). The Report of the F. T. C. on Resale Price Maintenance (F. T. C. Res., 4/25/39) was submitted to Congress 12/13/45. The inquiry developed facts concerning the programs of trade organizations interested in the extension and enforcement of minimum resale price maintenance contracts, and the effects of the operation of such contracts upon consumer prices and upon sales volumes of commodities in both the price-maintained and nonprice-maintained categories.

Rubber Tires and Tubes.—See Distribution Methods and Costs.

Salaries (Senate).—The Commission investigated (S. Res. 75, 73d, 5/29/33) salaries of executives and directors of corporations (other than public utilities)

engaged in interstate commerce, such corporations having more than \$1,000,000 capital and assets and having their securities listed on the New York stock or curb exchanges. The Report of the F. T. C. on Compensation of Officers and Directors of Certain Corporations (15 p., processed, 2/26/34) explained the results of the inquiry.¹⁶ The facts developed focused the attention of Congress on the necessity of requiring listed corporations to report their salaries.

Silverware Manufacturers (W. P. B.), Wartime, 1942-43.—Silverware manufacturers were investigated at the request of the War Production Board to determine the extent to which they had complied with the copper orders, that is, W. P. B. General Preference Order No. m-9-a, Supplemental Order No. m-9-b, and Conservation Order m-9-c, as amended.

Silverware Manufacturers and Silver Suppliers (W. P. B.), Wartime, 1942-43.— The activities of silverware manufacturers and silver suppliers under W. P. B. ,Conservation and Limitation Orders m-9-a, b, and c, m-100 and L-140 were investigated and reported on at the request of the War Production Board.

Sisal Hemp (Senate).—The Commission assisted the Senate Committee on Agriculture and Forestry in an inquiry (S. Res. 170, 64th, 4/17/16) and advised how certain quantities of hemp promised by the Mexican sisal trust, might be fairly distributed among American distributors of binder twine (Mexican Sisal Hemp, S. Doc. 440, 64th, 8 p., o. p., 5/9/16). The Commission's distribution plan was adopted.

Southern Livestock Prices.—See Food.

Steel Code and Steel Code as Amended (Senate and President).—The Commission investigated (S. Res. 166 73d, 2/2/34) price fixing, price increases, and other matters (Practices of the Steel Industry Under the Code, S. Doc. 159, 73d, 79 p., o. p., 3/19/34) and the Commission and N. R. A. studied the effect of the multiple basing-point system under the amended code (Report of the F. T. C. to the President in Response to Executive Order of May 30, 1934, With Respect to the Basing-point System in the Steel Industry, 125 p., o. p., 11/30/34).¹⁷ The Commission recommended important code revisions.

Steel Companies, Proposed Merger (Senate).—An inquiry (S. Res. 286, 67th 5/12/22) into a proposed merger of Bethlehem Steel Corp. and Lackawanna Steel Co., and of Milvale Steel Ordnance Co., Republic Iron & Steel Co., and Inland Steel Co., resulted in a two-volume report, Merger of Steel and Iron Companies (S. Doc. 208, 67th, 11p., o. p., 6/5/22 and 9/7/22).

Steel Costs and Profits.—See Wartime Cost Findings, 1917-18.

Steel Costs and Profits (O. P. A.), Wartime, 1942-43.—A report on the Commission's survey of costs, prices and profits in the steel industry, begun in April 1942 at the request of O. P. A., was made to that agency. The inquiry covered 29 important steel-producing companies.

Steel Industry (O. P. M.), Wartime, 1941-42.—This investigation covered practically every steel mill in the country and was conducted for the purpose of determining the manner in which the priorities and orders promulgated by the Office of Production Management were being observed, i. e., the technique used in the steel industry in meeting the requirements of O. P. M. (later the War Production Board) orders and forms controlling the distribution of pig iron, iron and steel, iron and steel alloys, and iron and steel scrap.

Steel Sheet Piling—Collusive Bidding (President).—Steel sheet piling prices on certain Government contracts in New York, North Carolina, and Florida

¹⁶ The salary lists do not appear in the report but are available for inspection.

¹⁷ As of the same date, the N. R. A. published its report of the National Recovery Administration on the Operation of the Basing-Point System in the Iron and Steel Industry (175 p., processed). The basing-point system is also discussed in published reports listed under "Cement" and "Price Bases" herein.

were investigated (inquiry referred to F. T. C. 11/20/35). The F. T. C. Report to the President on Steel Sheet Piling (42 p., processed, 6/10/36 demonstrated the existence of collusive bidding because of a continued adherence to the basing-point system¹⁸ and provisions of the steel industry's code.

Stock Dividends (Senate).—The Senate requested (S. Res. 304, 69th, 12/22/26) the names and capitalizations of corporations which had issued stock dividends, and the amounts thereof, since the Supreme Court decision (3/8/20) holding that such dividends were not taxable. The same information for an equal period prior to the decision was also requested. The Commission submitted a list of 10,245 corporations, pointing out that declaration of stock dividends at the rate prevailing did not appear to be a result of controlling necessity and seemed questionable as a business policy (Stock Dividends, S. Doc. 26, 70th, 273 p., o. p., 12/5/27).

Sugar.—See Food.

Sulphur Industry (F. T. C.).—In its report to Congress on The Sulphur Industry and International Cartels (6/16/47), the Commission stated that the operations of all four producers constituting the American sulphur industry generally have been highly profitable, and that the indications are that foreign cartel agreements entered into by Sulphur Export Corp., an export association organized under the Webb-Pomerene Law, have added to the profitability of the U. S. industry. On 2/7/47, after hearings, the Commission recommended that Sulphur Export Corp. readjust its business to conform to law.

Taxation and Tax-Exempt Income.—See National Wealth and Income.

Temporary National Economic Committee, Studies of the F. T. C.—See F. T. C. Annual Report, 1941, p. 218, for titles.

Textile Mills, Cotton (W. P. B.), Wartime, 1943-44.—For the War Production Board the Commission conducted a compliance investigation of manufacturers of cotton yarns, cordage, and twine to ascertain whether they were in violation of Priorities Regulation 1, as amended, by their failure to fill higher rated orders at the time they filled lower rated orders.

Textiles (President).—President Roosevelt (Executive order of 9/23/34) directed an inquiry into the textile industry's labor costs, profits, and investment structure to determine whether increased wages and reduced working hours could be sustained under prevailing economic conditions. Reports covering the cotton, woolen and worsted, silk and rayon, and thread, cordage and twine industries were: Report of the F. T. C. on Textile Industries, Parts I to VI, 12/31/34 to 6/20/35, 174 p., o. p. (Part VI financial tabulations processed 42 p., o. p.); Report of the F. T. C. on the Textile Industries in 1933 and 1934, Parts I to IV, 8/1/35 to 12/5/35, 129 p., o. p.; Parts II and III, o. p. Part IV, processed, 21 p., o. p.; accompanying tables, processed, 72 p., o. p.); Cotton spinning Companies Grouped by Types of Yarn Manufactured During 1933 and 1934, 1/31/36, 20 p., processed, o. p.; Cotton Weaving Companies Grouped by Types of Woven Goods Manufactured During 1933 and 1934, 3/24/36, 48 p., processed, o. p.; Textile Industries in the First Half of 1935, Parts I to III, 5/22/36 to 8/22/36, 119 p., processed, o. p.; Textile Industries in the Last Half of 1935, Parts I to III, 11/20/36 to 1/6/37, 155 p., processed, o. p.; and Textile Industries in the First Half of 1936, Parts I to III, 1/21/37 to 2/11/37, 163 p., processed, o. p.

Textiles—Combed Cotton Yarns.—High prices of combed cotton yarns led to this inquiry (H. Res. 451, 66th, 4/5/20) which disclosed that while for several years profits and prices had advanced, they declined sharply late in 1920 (Report of the F. T. C. on Combed Yarns, 94 p., o. p., 4/14/21).

¹⁸ See footnote 15, p. 157.

Textiles—Cotton Growing Corporation.—See Foreign Trade.

Textiles—Cotton Merchandising (Senate).—Investigating abuses in handling consigned cotton (S. Res. 252, 68th, 6/7/24), the Commission made recommendations designed to correct or alleviate existing conditions (Cotton Merchandising Practices, S. Doc. 194, 68th, 38 p., o. p., 1/20/25).

Textiles—Cotton Trade (Senate).—Investigation (S. Res. 262, 67th, 3/29/22) involved a decline in cotton prices, 1920-22, as reported in Preliminary Report of the F. T. C. on the Cotton Trade (S. Doc. 311, 67th, 28 p., o. p., 2/26/23). After a second inquiry (S. Res. 429, 67th, 1/31/23), the Commission recommended certain reforms in trading practices and particularly in permitting Southern delivery of cotton on New York futures contracts (The Cotton Trade, incl. testimony, S. Doc. 100, 68th, 2 vols., 510 p., o. p., 4/28/24). A subsequent Senate bill (S. 4411, 70th, 5/18/28) provided for Southern warehouse delivery, but, before any law was enacted, the New York Cotton Exchange adopted Southern delivery on New York futures contracts (11/16/28 and 2/26/30) in accordance with the Commission's recommendations.

Textiles—Woolen Rag Trade (F. T. C.), Wartime, 1917-18.—The Report on the Woolen Rag Trade (90 p., o. p., 6/30/19) contains information gathered during the World War, 1917-18, at the request of the War Industries Board, for its use in regulating the prices of woolen rags employed in the manufacture of clothing.

Tin Consumers (W. P. B.), Wartime, 1942-43.—The principal consumers of tin were investigated at the instance of the War Production Board to determine the degree of their compliance with Conservation Order m-43-a, as amended, and other orders and regulations issued by the Director of the Division of Industry Operation, controlling the inventories, distribution, and use of the tin supply in the U. S.

Tobacco (Senate).—Inquiry (S. Res. 329, 2/9/25) into activities of two well-known companies disclosed that alleged illegal agreements or conspiracies did not appear to exist. (The American Tobacco Co. and the Imperial Tobacco Co., S. Doc. 34, 69th, 129 p., o. p., 12/25/25).

Tobacco Marketing—Leaf (F. T. C.).—Although representative tobacco farmers in 1929 alleged existence of territorial and price agreements among larger manufacturers to control cured leaf tobacco prices, the Commission found no evidence of price agreements and recommended production curtailment and improvement of marketing processes and cooperative relations (Report on Marketing of Leaf Tobacco in the Flue-Cured Districts of the States of North Carolina and Georgia, 54 p., processed, 5/23/31).

Tobacco Prices (Congress).—Inquiries with respect to a decline of loose-leaf tobacco prices following the 1919 harvest (H. Res. 533, 66th, 6/3/20) and low tobacco prices as compared with high prices of manufactured tobacco products (S. Res. 129, 67th, 8/9/21) resulted in the Commission recommending modification of the 1911 decree (dissolving the old tobacco trust) to prohibit permanently the use of common purchasing agencies by certain companies and to bar their purchasing tobacco under any but their own names (Report of the F. T. C. on the Tobacco Industry, 162 p., o. p., 12/11/20, and Prices of Tobacco Products, S. Doc. 121, 67th, 109 p., o. p., 1/17/22).

Trade and Tariffs in South America (President).—Growing out of the First Pan-American Financial Conference held in Washington, May 24-29, 1915, this inquiry (referred to F. T. C. 7/22/15) was for the purpose of furnishing necessary information to the American branch of the International High Commission appointed as a result of the conference. Customs administration and tariff policy were among subjects discussed in the Report on Trade and Tariff In Brazil, Uruguay, Argentina, China, Bolivia, and Peru (246 p., o. p., 6/30/16).

Twine.—See Sisal Hemp and Textiles.

Utilities.—See Power.

War Material Contracts (House), Wartime, 1941-42.—At the request of the House Committee on Naval Affairs, the Commission assigned economic and legal examiners to assist in the Committee's inquiry into progress of the national defense program (H. Res. 162, 77th, 4/2/41). The Commission's examiners were active in field investigations covering aircraft manufacturers' cost records and operation, naval air station construction, materials purchased for use on Government contracts, and industry expansion financing programs.

Wartime Cost Finding (President), 1917-18.—President Wilson directed the Commission (7/25/17) to find the costs of production of numerous raw materials and manufactured products. The inquiry resulted in approximately 370 wartime cost investigations. At later dates reports on a few of them were published,¹⁹ including: Cost Reports of the F. T. C. — Copper (26 p., o. p., 6/30/19); Report of the F. T. C. on Wartime Costs and Profits of Southern Pine Lumber Companies (94 p., o. p., 5/1/22); and Report of the F. T. C. on Wartime Profits and Costs of the Steel Industry (138 p., 2/18/25). The unpublished reports²⁰ cover a wide variety of subjects. On the basis of the costs as found, prices were fixed, or controlled in various degrees, by Government agencies such as the War and Navy Departments, War Industries Board, Price Fixing Committee, Fuel Administration, Food Administration, and Department of Agriculture. The Commission also conducted cost inquiries for the Interior Department, Tariff Commission, Post Office Department, Railroad Administration, and other Government departments or agencies. It is estimated that the inquiries helped to save the country many billions of dollars by checking unjustifiable price advances.

Wartime Costs and Profits (F. T. C.).—Cost and profit information for 4,107 identical companies for the period 1941-45 is contained in a Commission report (1948) on Wartime Costs and Profits for Manufacturing Corporations, 1941 to 1945 (30 p., processed, with 106 p. appendix), Compilation of the information contained in the report was begun by the Office of Price Administration prior to the transfer of the financial reporting function of that agency to the Federal Trade Commission in December 1946.

Wartime Inquiries, 1917-18, Continued.—further wartime inquiries of this period are described herein under the headings: Coal, Coal Reports—Cost of Production, Cost of Living, Flax, Food, Farm Implements, Independent Harvester Co., Leather and Shoes, Paper—Book, Paper—Newsprint, Profiteering, and Textiles—Woolen Rag Trade.

Wartime Inquiries, 1941-45.—To aid in the 1941-45 war program, F. T. C. was called upon by other Government departments, particularly the war agencies, to use its investigative, legal, accounting, statistical and other services in conducting investigations. It made cost, price, and profit studies; compiled industrial corporation financial data; investigated compliance by basic industries with W. P. B. priority orders; and studied methods and costs of distributing important commodities. The 1941-45 wartime investigations are herein listed under the headings: Advertising as a Factor in Distribution; Cigarette Shortage; Distribution Methods and Costs; Fertilizer and Related Products; Food—Biscuits and Crackers; Food—Bread Baking; Food—Fish; Food—Flour Milling; Household Furniture; Industrial Financial Reports; Metal-Working Machines; Paperboard; Priorities; Steel Costs and Profits; and War Material Contracts.

¹⁹ See footnote 10, p. 148.

²⁰ Approximately 260 of the wartime cost inquiries are listed in the F. T. C. Annual Reports, 1918, pp. 29-30, and 1919, pp. 38-42 and in World War Activities of the F. T. C., 1917-18 (69 p., processed, 7/15/40).