

Subpart D—Energy Services**§ 905.40 Technical assistance.**

Western shall establish a program that provides technical assistance to customers to conduct integrated resource planning, implement applicable IRPs and small customer plans, and otherwise comply with the requirements of these regulations.

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FEDERAL TRADE COMMISSION**16 CFR Part 429****Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations**

AGENCY: Federal Trade Commission.

ACTION: Final non-substantive amendments to the rule.

SUMMARY: The Federal Trade Commission ("the Commission") announces that it has concluded a review of its Trade Regulation Rule on Cooling-Off Period for Door-to-Door Sales ("Cooling-Off Rule" or "Rule"), and determined there is a continuing need for the Rule. This review was conducted as part of the Commission's ongoing program to review all of its rules and guides periodically. The Commission has also determined to issue non-substantive amendments to several Rule provisions. Specifically, the Commission is amending the Rule by renaming it so that it more clearly identifies the kinds of sales it covers and by inserting two notes, formerly at the end of the Rule, into the Rule itself. Moreover, the Commission is amending the Rule by adding a new section containing two exemptions to the Rule that the Commission granted, in November 1988, to certain sellers of arts and crafts and of automobiles. The Commission is also expanding the exemption for automobiles to include vans, trucks and other motor vehicles sold at temporary places of business by dealers having permanent places of business. Further, the Commission is amending the Rule by adding a parenthetical statement to the Rule's definition of the term "Door-to-Door Sale." This new statement gives examples of kinds of sales locations covered by the Rule. The Commission is also amending the Rule's definition of "Business Day" to reflect changes in federal holidays. Finally, the Commission is amending the Rule to make the typeface used in the sample "Notice of Cancellation" more readable

and to substitute the gender neutral words "the buyer" or "the buyer's" for the pronouns "he," "his," and "him."

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Lemuel W. Dowdy, Attorney, (202) 326-2981, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The Cooling-Off Rule was promulgated by the Commission on October 26, 1972,¹ and subsequently amended on November 1, 1973,² November 19, 1973,³ and November 10, 1988.⁴ The Rule, as amended, declares it to be an unfair and deceptive act or practice for any seller in a door-to-door sale of consumer goods or services, with a purchase price of \$25 or more, to fail to furnish the buyer with certain oral and written disclosures regarding the right of the buyer to cancel the contract within three business days from the date of the sales transaction. The Rule also requires a seller, within 10 business days after receipt of a valid cancellation notice from a buyer, to honor the buyer's cancellation by refunding all payments made under the contract, by cancelling and returning any security interests created in the transaction, and by notifying the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

The Rule requires the seller in a door-to-door sale to furnish the buyer with a completed receipt, or a copy of the sales contract, containing a summary notice informing the buyer of the right to cancel the transaction. The Rule also requires a seller to furnish the buyer with a completed cancellation form, in duplicate, captioned either "Notice of Right to Cancel" or "Notice of Cancellation," one copy of which can be returned by the buyer to the seller to effect cancellation.

¹ 37 FR 22933 (Oct. 26, 1972). The effective date of the Rule was later set as June 7, 1974. 38 FR 33766 (Dec. 7, 1973).

² 38 FR 30105 (Nov. 1, 1973). This amendment revised the fourth paragraph of the sample "Notice of Cancellation" set forth in section 429.1(b) of the Rule, 16 CFR 429.1(b), to make clearer what are the buyer's responsibilities for goods delivered under a contract the buyer has cancelled.

³ 38 FR 31828 (Nov. 19, 1973). This amendment corrected a misstatement in the November 1, 1973, amendment concerning the amendment's effective date.

⁴ 53 FR 45455 (Nov. 10, 1988). This amendment allowed alternative wording in certain parts of the Rule's required "Notice of Cancellation." At the same time, the Federal Register notice announced the two exemptions the Commission was granting to sellers of arts and crafts and of automobiles sold at temporary places of business.

In issuing the Rule, the Commission adopted a broad definition of "Door-to-Door Sale" to include any sale "made at a place other than the place of business of the seller." In doing this, the Commission indicated that the Rule covers more than just at-home sales.⁵ The Commission has on several occasions reiterated this position. For example, in a 1978 Advisory Opinion, the Commission stated:

In the opinion of the Commission, firms which temporarily or sporadically rent hotel rooms, motel rooms, public halls or other facilities and invite members of the general public to attend a presentation therein, the purpose of which is to sell them courses of training, are subject to the provisions of the Trade Regulation Rule concerning a Cooling-Off Period for Door-To-Door Sales (16 CFR 429).⁶

Moreover, pursuant to Section 18(g)(2) of the FTC Act,⁷ the Commission on November 10, 1988, granted exemptions to the Rule to certain sellers of automobiles and of arts and crafts at temporary business locations.⁸ In granting these exemptions, the Commission noted that, when it had issued the Rule in 1972, it was concerned not only with sales made at consumers' homes, but also with sales by "itinerant salesmen who sell at restaurants, shops and other places."⁹

II. Background

In 1983, the Commission began a review of the Cooling-Off Rule pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603, and published a notice in the Federal Register soliciting comment on whether the Rule had a significant impact on small businesses and, if so, whether the Rule needed amendment to minimize its impact on small

⁵ 37 FR 22947 (Oct. 26, 1972).

⁶ Advisory Opinion, dated July 14, 1978, in FTC File No. D.H. 70016.

⁷ 15 U.S.C. 57a(g)(2). This section of the FTC Act provides that the Commission may, on its own or on the basis of a petition, exempt persons from a rule's application if their inclusion is not necessary to prevent a practice to which the rule relates. Exemptions are considered through notice and comment rulemaking.

⁸ 53 FR 45455 (Nov. 10, 1988). The first exemption was for sellers of automobiles at auctions, tent sales and other temporary places of business, provided the seller has a permanent place of business elsewhere. The second exemption was for sellers of arts and crafts at fairs and other, similar locations. The Commission, when granting these exemptions, determined that, at least with regard to these transactions, the record indicated an absence of the kinds of problems (such as the high pressure sales tactics, the nuisance aspects, the equivalent of deceptive door-openers, or the misrepresentations as to the quality, price or characteristics of the product or services offered for sale) that are often generally associated with sales made in the home.

⁹ *Id.* at 45458.

businesses.¹⁰ After reviewing the comments received, the Commission determined that there was a continuing need for the Rule and that there was no basis to conclude that the Rule had a significant impact on small businesses.¹¹ At the same time, the Commission proposed and solicited comments on two limited exemptions and on non-substantive amendments permitting alternative methods of compliance with the Rule's notice requirements.¹² The Commission adopted these proposals on November 10, 1988.¹³

In 1992 the Commission determined, as part of its oversight responsibilities, to review periodically all of its rules and guides. The information obtained from such reviews assists the Commission in identifying those rules and guides that warrant modification or rescission.

On April 15, 1994, pursuant to the Commission's regulatory review project, the Commission published in the Federal Register a notice requesting public comments concerning the Rule's costs and benefits, its overall regulatory and economic impact, and the current need for the Rule.¹⁴ The Federal Register notice specifically asked for comment on whether the Rule should continue to cover sales made at temporary and short-term places of business, such as hotel rooms, convention centers, fairgrounds and restaurants. Moreover, the Commission specifically requested comments on whether the two existing exemptions to the Rule for sellers of automobiles and of arts and crafts at temporary places of business should be continued or expanded. Specifically, the Commission asked if the exemption covering arts and crafts sold at fairs and other, similar places should be expanded to include garden equipment, fencing materials and other non-crafts. The Commission also asked if the current exemption for automobiles sold at auctions, tent sales and other temporary places of business (provided the seller has a permanent place of business) should be expanded to include pickup trucks, vans, trucks and campers. Last, the Commission sought comment on its proposal to eliminate the outdated list of federal holidays given in the Rule's definition of "Business Day" and to replace it with a general statement that federal holidays are excluded from the Rule's three-day cancellation period.

¹⁰ 48 FR 9032-34 (Mar. 3, 1983).

¹¹ 52 FR 29539 (Aug. 10, 1987).

¹² *Id.*

¹³ 53 FR 45455 (Nov. 10, 1988).

¹⁴ 59 FR 18008 (Apr. 15, 1994).

III. Summary and Analysis of Comments

The April 15, 1994, Federal Register notice gave all interested persons 30 days to submit, in writing, their data, views and arguments concerning the existing Rule and any proposed amendments or exemptions to it. The Commission received comments from ten organizations, consisting of two door-to-door sellers, three trade associations representing door-to-door sellers, four associations representing consumer interests, and the Office of the Attorney General of the State of Iowa.¹⁵

(A) Responses to the Federal Register Notice's Regulatory Review Questions

1. Summary

The first six questions posed by the Federal Register notice were general ones, such as whether the Commission should retain the Rule and what are the Rule's costs and benefits. All ten commenters responded to the first two questions concerning retention and/or modification of the Rule by urging the Commission to keep the Rule. All commenters, however, either proposed or endorsed one or more of the amendments to the Rule described in subsections B, C and D *infra*. Only a few comments specifically addressed any of the four remaining questions concerning

¹⁵ The list below includes the commenter's name, along with an acronym in parenthesis, the public record document number assigned to the comment by the Commission's Secretary, and a general description of the commenter. For the remainder of this Notice, each comment will be cited by the acronym and document number.

#001. Craftmatic Organization, Inc. ("CO"), a door-to-door seller of mattresses.

#002. American Association of Retired Persons ("AARP"), a representative of retired people throughout the country.

#003. International Hearing Society ("IHS"), a representative of hearing aid specialists located throughout the country and abroad.

#004. National Automobile Dealers Association ("NADA"), a representative of automobile and truck retailers located throughout the country.

#005. UAW-GM Legal Services Plan ("UAW-GM"), a representative of automobile workers and retirees through 70 law offices located throughout the country.

#006. Direct Selling Association ("DSA"), a representative of more than 150 companies that sell products by personal presentation, primarily at buyers' homes.

#007. State of Iowa Department of Justice ("IA DOJ"), the Consumer Protection Division of the Iowa Attorney General's office.

#008. Legal Aid Society of Dayton, Inc. ("LASOD"), a representative of consumer interests in Dayton, Ohio.

#009. National Association of Consumer Agency Administrators ("NACAA"), a representative of government consumer protection agencies at the municipal, county and state levels, with associate members in the consumer affairs departments of federal agencies.

#010. World Media International, Inc. ("WMI"), a door-to-door seller of various products.

the costs and benefits of the Rule, its possible conflict with other laws, and recent changes in relevant technology or economic conditions.

DSA stated that the Rule benefits both consumers and sellers, that it imposes no costs on consumers and only minimal printing costs on sellers, and that it does not conflict with other federal or state and local laws because the Rule sets a minimum national standard, leaving the states free to enact greater consumer protections.¹⁶ IA DOJ stated that the Rule benefits both consumers and sellers and imposes, at most, only negligible costs on consumers. It also stated the Rule imposes only negligible burdens on sellers, and that, although the Rule does overlap state laws, it does not thereby create any problems because it sets only minimum standards.¹⁷ NACAA stated that the Rule imposes no significant costs or burdens on consumers and is not overly burdensome on businesses. NACAA also stated that, although the Rule overlaps many state cooling-off statutes, there is no conflict because the Rule rightly sets only a minimum standard and the states should be free to require greater buyers' cancellation rights if they choose.¹⁸

2. Analysis

The comments indicate that the Rule provides substantial benefits to consumers without imposing unreasonable costs on sellers or others. Although most commenters proposed specific amendments, they were unanimous in stating that the Commission should retain the Rule.

(B) Responses to the Federal Register Notice's Questions Concerning Sales at Places Other Than the Regular Place of Business of the Seller

1. Summary

The Federal Register notice contained four questions concerning the Rule's coverage of sales made at temporary places of business. The first asked whether sales at temporary business locations involve the kinds of problems associated generally with door-to-door sales. Comments from buyers' representatives stated that one or more of the problems described in the Federal Register notice as recurrent with in-home sales (e.g., the prevalence of high pressure sales and failure to disclose the purpose of the contact) are frequently also associated with sales at temporary business locations. Several of these commenters noted that sellers using

¹⁶ DSA, #006, pp. 2-4.

¹⁷ IA DOJ, #007, pp. 2-4.

¹⁸ NACAA, #009, pp. 2-4.

temporary business locations often pressure consumers into making immediate purchase decisions.¹⁹ IA DOJ cited examples where direct sellers lure consumers to temporary locations with promises of "free" items or services only to surprise consumers with high-pressure sales pitches.²⁰

IA DOJ and NACAA observed that consumer protection agencies frequently encounter direct sellers that use hotel conference rooms and banquet halls to sell expensive items of dubious value, such as books or tapes describing get-rich-quick schemes, multi-level marketing plans, business opportunities and overpriced rugs.²¹ These sellers, according to these commenters, often draw consumers to the sites by advertising self-help seminars or other non-sales activities, and then use misrepresentations and high pressure tactics to sell their products or services.²² IA DOJ also stated that it is a nuisance for consumers to be drawn out of their homes by promises of free merchandise or information, only to be faced with a high-pressure sales pitch touting goods or services that ultimately prove to be of little value.²³

Another question asked whether certain types of temporary business locations (e.g., fairgrounds, convention centers, restaurants or dormitories) are more or less likely to be associated with the problems found in door-to-door selling. IA DOJ stated that these problems occur just as frequently at temporary businesses located in retail settings as they do at other temporary business locations.²⁴ The commenter said, however, that problems found in door-to-door selling are less likely to occur when selling takes place at temporary sites set up at events where the primary focus is not on selling products to consumers.²⁵ NACAA expressed concern that, when direct sellers use convention centers, rented halls and college dormitory lounges, some consumers may believe that the seller has been approved or screened by the owners or operators of the facility.²⁶

With respect to sales at auctions, IA DOJ and NACAA stated that there is a high potential for deception in such settings because consumers have little time to evaluate their purchases.²⁷ NACAA commented that "shills" are

sometimes used at rug auctions to drive up bids to inflated prices.²⁸ NACAA commented further that consumers purchasing automobiles at auctions sometimes do not understand that they may not be protected by warranties applicable in sales made at dealers' lots.²⁹ On the other hand, IA DOJ believed that the surprise sale solicitations that are often associated with hotel seminars are not common at auction sales and that consumers who attend auctions are generally not pressured to buy.³⁰

IA DOJ stated that problems with sales at temporary business locations are substantially mitigated if the seller has a permanent place of business in the consumer's area.³¹ If, however, there is no permanent place of business near the consumer, IA DOJ believed that consumers derive no benefit from the fact that the seller has a permanent place of business elsewhere.³²

The third question asked whether the Rule should continue to apply to sales solicited at temporary business locations. The five commenters that responded to this question stated that the Rule should continue to apply to such sales.³³ DSA stated that the Commission should not reduce the level of protection consumers now enjoy under the Rule.³⁴ IA DOJ offered the following reasons for applying the Rule to sales at temporary business locations:

In our experience, door-to-door sales persons rarely offer to give the consumer a day to think about a purchase and return the next day to consummate the sale. They pressure the consumer to buy the day they stop at the consumer's home. Similarly, sellers from temporary business locations are often in the consumers' community for only a day or two. These sellers often represent that consumers must buy during the seller's presence in the community. In addition, such sellers often lure consumers to the temporary site with promises of free merchandise or services, only to surprise consumers with high-pressure sales pitches for high-priced merchandise. Consumers who purchase from permanent business locations also can visit the business in person to request refunds and file complaints. In addition, sellers with permanent business locations in a community have greater incentive to deal fairly with their customers. These significant benefits are not available to consumers who purchase from door to door sellers or from those who sell from temporary business locations.³⁵

The fourth question concerning sales at temporary business locations sought comments on whether the current exemption for arts and crafts sold at fairs and similar places should be expanded to include other products, such as garden equipment, fencing materials and other non-crafts. The two commenters responding both opposed expanding this exemption. The IA DOJ stated that consumers attending these fairs, in many instances, lack sufficient time to consider making purchases.³⁶ NACAA noted that expanding this exemption would allow unscrupulous marketers to avoid Rule coverage.³⁷

The Federal Register notice also sought information on whether the current exemption for automobiles sold at auctions, tent sales and other temporary places (provided the seller has a permanent place of business) should be expanded to include trucks, campers and vans. NADA stated that this exemption should be expanded because the reasoning the Commission used in exempting the sale of automobiles at temporary business locations would apply with equal force to sales of pickup trucks, vans, trucks and campers.³⁸

NACAA, on the other hand, opposed extending the exemption to trucks, vans and campers because it has strong reservations about the current exemption for sales of automobiles at temporary business locations.³⁹ Specifically, NACAA believed that consumers purchasing motor vehicles at auctions sometimes do not understand that they may not be protected by warranties that would be applicable to sales made at dealers' lots. NACAA also believed that consumers may not perceive agreements they make at temporary locations as binding. For these reasons, NACAA opposed extending the exemption to include vehicles that may be even more expensive than cars.⁴⁰

In addition to opposing expanding the automobile exemption, NACAA proposed a modification to this exemption to ensure that "curbstoners" are covered by the Rule.⁴¹ NACAA stated that "curbstoners" (dealers who sell automobiles by posing as an

³⁶ *Id.* at 8.

³⁷ NACAA, #009, p. 6.

³⁸ NADA, #004, p. 1. The Commission received a similar suggestion when it solicited comments before granting the automobile exemption. Because, however, the Commission had not specifically sought comment on exempting such other vehicles, the Commission concluded that adequate notice to the public had not been given at that time to justify the broader exemption.

³⁹ NACAA, #009, p. 7.

⁴⁰ *Id.*

⁴¹ *Id.*

¹⁹ IA DOJ, #007, p. 5; LASOD, #008, p. 2; NACAA, #009, p. 5.

²⁰ IA DOJ, #007, p. 7.

²¹ IA DOJ, #007, p. 5; NACAA, #009, p. 5.

²² *Id.*

²³ IA DOJ, #007, p. 6.

²⁴ *Id.*

²⁵ *Id.*

²⁶ NACAA, #009, p. 6.

²⁷ IA DOJ, #007, p. 6; NACAA, #009, p. 5.

²⁸ NACAA, #009, p. 5.

²⁹ *Id.* at 7.

³⁰ IA DOJ, #007, pp. 6-7.

³¹ *Id.*

³² *Id.*

³³ AARP, #002, p. 4; DSA, #006, p. 3; IA DOJ, #007, p. 7; LASOD, #008, p. 2; NACAA, #009, p. 4.

³⁴ DSA, #006, p. 4.

³⁵ IA DOJ, #007, p. 2.

individual selling a personal vehicle) often make sales by misrepresenting the mechanical condition of the car and by rolling back the odometer. Many "curbstoners," according to NACAA, are included in the exemption because they have a permanent business location.

2. Analysis

The Commission has determined that the Rule should continue to apply to sales at temporary business locations. The Rule specifically excludes sales that take place at the seller's "place of business," which is defined as the seller's "main or permanent branch office or local address."⁴² The term "local address," as it is used in the definition of "place of business," means a permanent local address of the seller. Thus, a seller's temporary business location does not constitute a "local address." Such temporary places of business include facilities rented on a temporary and short-term basis, such as hotel rooms, convention centers, fairgrounds and restaurants. In addition, sales occurring at other places that are not the seller's place of business, such as a buyer's workplace or dormitory lounge, are covered by the Rule.

The Commission also has determined to retain the exemptions for sellers of arts and crafts and of automobiles sold at temporary places of business. In addition, the Commission has decided to expand the automobile exemption to cover all motor vehicles sold at a dealer's temporary place of business (provided the dealer has a permanent sales location). In the Commission's view, there is no compelling reason to distinguish cars from other kinds of motor vehicles sold under the same circumstances.

The Commission has determined that modifying the exemption for automobiles to bring "curbstoners" under the Rule is not necessary. The problems with "curbstoners" that NACAA raises are not those that the Cooling-Off Rule was designed to correct. Other laws regulate such practices. Most "curbstoners" are covered by the Commission's Used Car Rule.⁴³ If the seller displays a Buyers

⁴² The Rule's definition of "door-to-door sale" excludes sales that are made at "the place of business of the seller." 16 CFR 429.1, note 1(a). The Rule defines "place of business" as "the main or permanent branch office or local address of the seller." 16 CFR 429.1, note 1(d).

⁴³ 16 CFR Part 455. The Used Car Rule requires dealers to post a Buyers Guide on each used car to disclose whether the vehicle is sold with a warranty or "as is." The Buyers Guide also warns consumers not to rely on spoken promises and to seek independent inspections. Used car dealers must comply with the Used Car Rule if they sell more than five used vehicles within a twelve month

Guide required by the Used Car Rule, consumers are likely to infer that the seller is a used car dealer rather than a private individual selling a personal vehicle. "Curbstoners" who fail to comply with the Used Car Rule are subject to an enforcement action by the Commission. If a state's consumer protection law authorizes enforcement of FTC Rules, that state's law enforcement agencies can also bring enforcement actions against "curbstoners" for violating the Used Car Rule. Similarly, odometer tampering is prohibited by federal law.⁴⁴ The U.S. Department of Justice enforces this law, and state Attorneys General can also bring actions under the federal odometer law against "curbstoners" that roll back odometers.⁴⁵

Lastly, the Commission has decided against expanding the arts and crafts exemption. The comments do not support adding more transactions to this exemption. Furthermore, expanding the exemption could create confusion as to what sales at fairs and similar places are covered by the Rule.

(C) Responses to the Federal Register Notice's Remaining Questions

1. Summary

The Rule requires door-to-door sellers to offer buyers a cooling-off period of three business days from the date of the transaction. The current Rule defines "Business Day" as:

Any calendar day except Sunday or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

The Federal Register notice sought comment on whether this definition should be modified to refer to "any federal holiday" rather than listing the specific holidays. The amendment would enable the Rule automatically to take into account any changes in federal holidays. Since promulgation of the Rule, the federal George Washington's Birthday holiday has been replaced with the Presidents' Day holiday and a new federal holiday honoring the birthday of Martin Luther King, Jr., has been adopted. The Commission's proposed amendment would have corrected the existing Rule's out-of-date listing of holidays and avoided the need for

period. The Commission assumes that most "curbstoners," especially those who also sell at a permanent sales location, would sell more than five cars per year.

⁴⁴ 49 U.S.C.A. 32709-11 (1994).

⁴⁵ *Id.* at 32709(d).

further amendments if other changes in the federal holidays are ever made.

Three commenters addressed the proposal to amend the Rule's definition of "business day." IA DOJ supported the proposed amendment.⁴⁶ NACAA opposed it, arguing that the Rule should specifically list the federal holidays so that consumers can readily identify them.⁴⁷ CO stated that the proposal should be revised to take into account the fact that, under some state laws or local ordinances, Saturday is not considered a business day. To avoid confusion, CO suggested that the following sentence be added to the proposed amendment: "This definition shall take precedence over state or local law or ordinance."⁴⁸

2. Analysis

The Commission has decided to amend the Rule's definition of "business day" by updating the list of federal holidays. This listing will allow both consumers and sellers to identify precisely those dates covered by the Rule's cancellation period. The Commission, however, has determined not to add to the definition of "business day" a sentence stating that the Rule's definition takes precedence over state or local law. The Rule does not preempt state laws or local regulations providing cancellation rights that are substantially the same or greater than that provided by the Rule.⁴⁹

Further, the Notice of Cancellation that consumers receive at the time they sign the contract states exactly what cancellation period applies to their transaction. This notice has a space where the seller is required to write in the specific time when the cancellation period ends: "To cancel this transaction, mail * * * this cancellation notice * * * to _____ not later than midnight of (date) _____." Thus, sellers can factor in time periods and days excluded by state law in calculating when the cancellation period ends. The Rule in essence only provides a right to have a minimum of three business days to cancel, as business days are counted under the Rule.

(D) Proposals Raised by Commenters

1. Summary

The commenters, in response to the Commission's request for suggestions on how the Rule might be modified, suggested a total of ten different amendments to the Rule. The five

⁴⁶ IA DOJ, #007, p. 2.

⁴⁷ NACAA, #009, p. 7.

⁴⁸ CO, #001, p. 11.

⁴⁹ See 16 CFR 429.1, note 2.

commenters representing sellers recommended that the Commission amend the Rule by: (1) Raising the \$25 minimum;⁵⁰ (2) allowing sellers more than 10 days to make refunds;⁵¹ (3) requiring sellers to give buyers just a written, not both an oral and a written, notice of cancellation rights;⁵² (4) exempting sales of hearing aids at temporary business locations;⁵³ (5) allowing sellers to substitute "satisfaction" or "money back" guarantees in place of the Rule's cooling-off period;⁵⁴ and (6) allowing sellers and buyers to execute waivers of the Rule in instances in which the buyers want delivery prior to three business days after the transactions.⁵⁵

The five commenters representing buyers recommended amending the Rule to: (1) Allow buyers more than 3 business days to cancel covered sales contracts;⁵⁶ (2) start the cooling-off period from the date of delivery of goods or services instead of the date of contract⁵⁷ or prohibit delivery of goods or providing of services until after expiration of cooling-off period;⁵⁸ (3) defer starting the cooling-off period until the seller has complied with all the Rule's provisions;⁵⁹ and (4) expand the Rule's coverage to include all telephone and mail order consumer sales transactions or all consumer sales transactions, including those made at sellers' regular places of business.⁶⁰

2. Analysis

The comment suggesting that the minimum dollar amount be raised to reflect the price inflation of goods and services since 1972 appears to be based on the premise that the \$25 minimum was adopted because the Commission in 1972 thought low priced sales were not associated with the kinds of high

pressure tactics the Rule was meant to prevent. In fact, however, this was not the Commission's reason for adopting the \$25 minimum. The Commission's principal purpose in adopting the \$25 minimum was "to exclude sales by milkmen, laundrymen and other route salesmen"⁶¹ (*i.e.*, sales occurring between the same seller and buyer on an ongoing basis). The commenter did not offer evidence that other low priced items, sold door-to-door on a one-time basis, would not be associated with such high pressure sales tactics if they were exempted from the Rule. There is insufficient evidence justifying amendment of this provision.

Another comment urged that the Commission delete the Rule provision requiring sellers to give oral notice of the right to cancel. This comment asserted that the oral notice requirement could harm sellers because buyers might falsely allege that no oral notice was given in order to acquire a longer cancellation period. In addition, the comment contended that the oral notice requirement is an unnecessary duplication of the written notices.

The notion that consumers can lengthen the cancellation period by denying that they received the oral notice is incorrect. The cancellation period only runs for three business days from the date of the transaction. Merely requiring a written disclosure could make it easier for those using high pressure sales pitches to keep buyers unaware of the three-day cancellation period. Accordingly, the Commission is retaining the requirement that sellers give both written and oral notice of the right to cancel.

The requested exemption for hearing aids would be appropriate only if there were reliable and persuasive evidence showing that application of the Rule to such transactions is not necessary to prevent the practices prohibited by the Rule. Removing the protections of the Cooling-off Rule from sales of hearing aids at temporary business locations may adversely affect older consumers.⁶² Two of the eleven enforcement actions the Commission has brought alleging violations of the Rule concerned sales of hearing aids to elderly people. There is insufficient evidence to justify such an exemption. The Commission therefore at this time is not exempting sales of hearing aids at temporary business locations.

When the Commission issued the Rule, it considered and rejected

suggestions that sellers be allowed more than ten days to make the required refund⁶³ or that they be allowed to substitute "satisfaction guarantees" for the Rule's right to cancel⁶⁴ or be allowed to get buyers to waive their right to a cancellation period in order to get fast delivery.⁶⁵ The Commission's decision to require a ten-day period for making refunds took into account the possibility of the seller being injured by having made a refund while, unknown to the seller, the buyer stops payment on the check.⁶⁶ The comments did not offer new evidence or arguments on these issues. Therefore, the Commission has determined to take no action on the suggestions.

Although some commenters recommended a longer cooling-off period or expanding the Rule's coverage to all telephone and mail order solicitations, or even to all solicitations, they did not provide evidence that such changes would be necessary to correct the problems that the Rule was issued to address. The Cooling-Off Rule was not intended to be a federal "satisfaction guarantee" requirement or "buyers' remorse" insurance program. When it issued the Rule in 1972, the Commission considered, but rejected, such proposals.⁶⁷ The Rule instead has the limited purpose of correcting the specific problem of sales being obtained through high pressure and deceptive sales tactics used on consumers at times and places in which consumers typically may not expect to be solicited for sales and find it difficult to extricate themselves from the situation. Further, with respect to telephone solicitations, the Commission has addressed the issue of abusive and fraudulent practices in a separate proceeding. On August 16, 1995, the Commission promulgated a trade regulation rule governing telemarketing practices. This rule becomes effective on December 31, 1995.⁶⁸ Moreover, in mail order solicitations consumers can, more easily than in door-to-door sales, avoid or ignore unwanted sales pitches. They can simply not read or respond to the mailed sales literature. The Commission therefore continues to believe that the present Rule provides ample protection for buyers without placing undue burdens on sellers.

UAW-GM suggested that the Rule be amended to prohibit the delivery of

⁵⁰ WMI, #010, p. 1.

⁵¹ CO, #001, pp. 7-8; WMI, #010, pp. 1-2.

⁵² CO, #001, p. 4-6.

⁵³ IHS, #003, pp. 2-4. IHS requested that sales of hearing aids at temporary business locations be exempted from the Rule. The exemption is justified, contended IHS, because (1) hearing aids are medical devices regulated by the United States Food and Drug Administration ("FDA"), (2) most states require hearing aid providers to be licensed, and (3) most hearing aid providers in this country offer 30-day trial rental options.

⁵⁴ DSA, #006, pp. 2-3.

⁵⁵ CO, #001, pp. 9-10.

⁵⁶ AARP, #002, pp. 3-4; NACAA, #009, p. 3.

⁵⁷ NACAA, #009, p. 2.

⁵⁸ UAW-GM, #005, p. 1.

⁵⁹ UAW-GM, #005, p. 2; NACAA, #009, p. 3.

⁶⁰ IA DOI, #007, pp. 2-4 (telephone solicitations); LASOD, #008, pp. 1-2 (telephone and mail order solicitations and possibly all sales solicitations); NACAA, #009, p. 3 (telephone, facsimile machine and computer modem solicitations). In addition, DSA, #006, p. 3, a representative of sellers, stated that it "does not oppose reasonable extension of the Rule to telephone sales."

⁶¹ 37 FR 22935, 22945 (Oct. 26, 1972).

⁶² IHS noted in its comment that older consumers make up the major percentage of hearing aid customers.

⁶³ 37 FR 22935, 22952 (1972).

⁶⁴ *Id.* at 22947-48.

⁶⁵ *Id.* at 22952-53.

⁶⁶ *Id.* at 22952.

⁶⁷ 37 FR 22935, 22947 (Oct. 26, 1972).

⁶⁸ Telemarketing Sales Rule, 60 FR 43842 (Aug. 23, 1995).

goods or the providing of services until expiration of the cooling-off period. The commenter stated that, in its experience, once work has started or goods have been delivered, buyers think they no longer have a right to cancel. No evidence was submitted showing how widespread such a misunderstanding might be. The short, six-paragraph "Notice of Cancellation" required by the Rule to be given to every buyer describes in detail what should be done when a buyer cancels a sale after goods have been delivered. Accordingly, the Commission has determined to take no action on this suggestion.

Another comment proposed that the cooling-off period continue until the seller has complied with all the notice provisions of the Rule. The Commission specifically rejected a similar proposal when the Rule was issued because it determined that the incorporation of a remedial or punitive provision in the Rule for prospective violators was not necessary or appropriate.⁶⁹ The Commission stated further that, although an extension of the cooling-off period could be an appropriate remedy to include in an order against a seller that had violated the Rule, the rulemaking record did not support including such a provision in the Rule itself.⁷⁰ No new evidence or arguments have been submitted for why the Commission should revisit this issue; therefore, the Commission has determined to take no action on this proposal.

In addition to the proposals for Rule amendments discussed above, three commenters suggested that the Commission interpret the Rule in specific ways and revise the Rule to reflect these interpretations. One comment asked that the Commission specify in the Rule that the envelopes of mailed cancellation notices must be postmarked on or before the third business day after the date the contract is signed.⁷¹ The Commission rejects incorporating this requirement in the Rule. The Rule simply requires that cancellation notices be mailed or delivered to sellers by a certain date. Not all mail, not even all first class mail, is postmarked with a date. When exactly any notice was mailed or delivered is an evidentiary question that may be resolved by examining a number of relevant factors, including, but not limited to, a postmark.

Another comment urged the Commission to accept transmission by facsimile machines as coming within

the Rule's term "mail or deliver."⁷² The Commission agrees that facsimile transmissions would suffice to meet the Rule's delivery component, provided the buyer can demonstrate what was transmitted and when. A third comment urged the Commission to adopt the presumption used in Ohio in interpreting that state's cooling-off statute, which like the FTC's Rule covers sales made away from the seller's regular place of business. According to this presumption, when initial face-to-face negotiations leading to a sale occur outside the seller's regular place of business, the sale is presumed to be covered by the statute, even if the buyer later executes a final agreement at the seller's regular place of business.⁷³ The Rule's definition of "Door-to-Door Sale" specifies, however, that sales are covered only if the "buyer's agreement or offer to purchase" is made away from the seller's regular place of business. Therefore, the Rule already covers instances in which a seller convinces a buyer, away from the seller's place of business, to make a purchase and then merely memorializes the sale by having the buyer sign the contract at the seller's place of business. The Rule does not, however, cover instances in which initial negotiations or sales solicitations occur away from the seller's place of business and the buyer's agreement is obtained only after arriving at the seller's place of business.⁷⁴ The Commission rejects the notion that the Rule should cover such sales. These sales should be viewed as sales that take place at the seller's place of business.

IV. Discussion of Non-Substantive Amendments Being Adopted

The Commission has decided to adopt certain non-substantive amendments to the Rule. The following paragraphs discuss these amendments and the reasons for adopting them.

The current Rule is entitled "Cooling-Off Period for Door-to-Door Sales." The Commission is amending 16 CFR Part 429 to rename the Rule as "Cooling-Off Period for Sales Made at Homes or at Certain Other Locations" to clarify that the Rule covers more than just at-home sales.

The current Rule consists of just one section, 16 CFR 429.1, having nine paragraphs and two "Notes." The Commission is amending the Rule to include the first of these Notes, which contains the Rule's six definitions, as a new section of the Rule entitled "Definitions." and designated 16 CFR

Part 429.0. Further, the Commission is amending the Rule to include the second Note, which concerns the effect of the Rule on state laws and municipal ordinances, as another new section of the Rule entitled "Effect on State Laws and Municipal Ordinances" and designated 16 CFR Part 429.2.

The current Rule's definition of the term "Door-to-Door Sale" states that the term covers sales "made at a place other than the place of business of the seller." The Commission is amending this definition to add the following parenthetical explanation: "(e.g., sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges)." Amending the Rule to include this parenthetical statement would incorporate into the Rule the interpretations the Commission has provided in various Federal Register notices and other official publications.

The current Rule's definition of the term "Business Day" has an out-of-date listing of the federal holidays. This list omits Martin Luther King's Birthday and has George Washington's Birthday instead of Presidents' Day. For the reasons described previously, the Commission is amending this provision of the Rule to update the list of federal holidays.

The current Rule does not refer to the two exemptions the Commission has granted certain sellers of automobiles and of arts and crafts. The Commission therefore is also amending the Rule to add a third new section, to be entitled "Exemptions." and designated as 16 CFR Part 429.3, to contain the exemptions granted to the Rule. The Commission has determined to expand the exemption for automobiles to all motor vehicles. Thus, section 429.3 will indicate that the exemption applies to sellers of motor vehicles who have at least one permanent place of business.

Section 429.1(b) of the current Rule includes a sample of the required "Notice of Cancellation" that is printed in all upper case boldface type. The Rule only specifies the type size (ten point), the typeface (boldface), and the language (the same as that used in the contract) of the Notice.⁷⁵ The Rule does not specify any type style for the Notice or whether its type must be all uppercase or not. The example of the Notice shown in 16 CFR Part 429 is, however, in all uppercase type and sellers may think that such a format is required or preferred by the

⁶⁹ *Id.* at 37 FR 22935, 22957 (Oct. 26, 1972).

⁷⁰ *Id.*

⁷¹ CO, #001, pp 2-3.

⁷² NACAA, #001, p. 3.

⁷³ LASOD, #008, p. 2.

⁷⁴ See 16 CFR 429.1, note 1(a)(1).

⁷⁵ 16 CFR 429.1(b).

Commission. A combination of upper and lowercase type is generally regarded by experts as easier to read.⁷⁶ The Commission, therefore, is revising the sample notice so that it will instead appear in a combination of upper and lower case boldface type, thereby making the sample notice more readable. Sellers may, however, continue to use stocks of "Notices of Cancellation" printed with an all uppercase typeface.

The current Rule repeatedly uses masculine pronouns when referring to buyers. The Commission is amending the Rule to change the pronouns "he," "his," and "him," wherever they appear, to gender neutral terms like "the buyer" or "the buyer's."

List of Subjects in 16 CFR Part 429

Door-to-door sales; Trade practices.

Text of Amendments

For the reasons set forth in the preamble, 16 CFR Part 429 is amended to read as follows:

1. The heading of part 429 is revised to read as follows:

PART 429—RULE CONCERNING COOLING-OFF PERIOD FOR SALES MADE AT HOMES OR AT CERTAIN OTHER LOCATIONS

2. Further, the authority citation for part 429 is added to read as follows:

Authority: Sections 1–23, FTC Act, 15 U.S.C. 41–58.

3. Further, section 429.1 is amended by revising paragraphs (b), (d), (e) and (i) and by removing the authority citation following the section to read as follows:

§ 429.1 The Rule.

* * * * *

(b) Fail to furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned either "NOTICE OF RIGHT TO CANCEL" or "NOTICE OF CANCELLATION," which shall (where applicable) contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract.

Notice of Cancellation
[enter date of transaction]

(Date)

You may CANCEL this transaction, without any Penalty or Obligation, within

THREE BUSINESS DAYS from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within TEN BUSINESS DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice, or send a telegram, to [Name of seller], at [address of seller's place of business] NOT LATER THAN MIDNIGHT OF [date].

I HEREBY CANCEL THIS TRANSACTION.
(Date) _____
(Buyer's signature) _____

* * * * *

(d) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically the buyer's right to cancel the sale in accordance with the provisions of this section.

(e) Fail to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.

* * * * *

(i) Fail, within 10 business days of receipt of the buyer's notice of cancellation, to notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

4. Further, part 429 is amended by redesignating note 1 to § 429.1 as § 429.0 and revising it to read as follows:

§ 429.0 Definitions.

For the purposes of this part the following definitions shall apply:

(a) *Door-to-Door Sale*—A sale, lease, or rental of consumer goods or services with a purchase price of \$25 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer,

and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller (e.g., sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges). The term "door-to-door sale" does not include a transaction:

(1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto; or

(3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days; or

(4) Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or

(5) In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If, in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(6) Pertaining to the sale or rental of real property, to the sale of insurance, or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.

(b) *Consumer Goods or Services*—Goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

(c) *Seller*—Any person, partnership, corporation, or association engaged in

⁷⁶The University of Chicago, *Chicago Manual of Style: The Essential Guide for Writers, Editors, and Publishers*, 14th Ed. University of Chicago Press, Chicago, Ill., 1993.

the door-to-door sale of consumer goods or services.

(d) *Place of Business*—The main or permanent branch office or local address of a seller.

(e) *Purchase Price*—The total price paid or to be paid for the consumer goods or services, including all interest and service charges.

(f) *Business Day*—Any calendar day except Sunday or any federal holiday (e.g., New Year's Day, Presidents' Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.)

5. Further, part 429 is amended by redesignating note 2 to § 429.1 as § 429.2 and revising it to read as follows:

§ 429.2 Effect on State laws and municipal ordinances.

(a) The Commission is cognizant of the significant burden imposed upon door-to-door sellers by the various and often inconsistent State laws that provide the buyer the right to cancel a door-to-door sales transaction. However, it does not believe that this constitutes sufficient justification for preempting all of the provisions of such laws and the ordinances of the political subdivisions of the various States. The rulemaking record in this proceeding supports the view that the joint and coordinated efforts of both the Commission and State and local officials are required to insure that consumers who have purchased from a door-to-door seller something they do not want, do not need, or cannot afford, be accorded a unilateral right to rescind, without penalty, their agreements to purchase those goods or services.

(b) This part will not be construed to annul, or exempt any seller from complying with, the laws of any State or the ordinances of a political subdivision thereof that regulate door-to-door sales, except to the extent that such laws or ordinances, if they permit door-to-door selling, are directly inconsistent with the provisions of this part. Such laws or ordinances which do not accord the buyer, with respect to the particular transaction, a right to cancel a door-to-door sale that is substantially the same or greater than that provided in this part, which permit the imposition of any fee or penalty on the buyer for the exercise of such right, or which do not provide for giving the buyer a notice of the right to cancel the transaction in substantially the same form and manner provided for in this part, are among those which will be considered directly inconsistent.

6. Further, part 429 is amended to add a new § 429.3 to read as follows:

§ 429.3 Exemptions.

(a) The requirements of this part do not apply for sellers of automobiles, vans, trucks or other motor vehicles sold at auctions, tent sales or other temporary places of business, provided that the seller is a seller of vehicles with a permanent place of business.

(b) The requirements of this part do not apply for sellers of arts or crafts sold at fairs or similar places.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 95-25573 Filed 10-19-95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 123 and 148

[T.D. 95-86]

RIN 1515-AB56

Examination of Baggage

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations in order to reflect Customs statutory authority to open and examine baggage and vehicles without the permission of the owners of the baggage and vehicles. These amendments make the pertinent Customs regulations consistent with Customs statutory authority to inspect and search baggage and vehicles coming into the United States.

EFFECTIVE DATE: November 20, 1995.

FOR FURTHER INFORMATION CONTACT: Lars-Erik Hjelm, Office of the Chief Counsel, U.S. Customs Service, 202-927-6900.

SUPPLEMENTARY INFORMATION:

Background

Several statutory provisions give the U.S. Customs Service the authority to open and examine baggage. The primary provisions are sections 482, 1461, 1462, 1496, 1581, and 1582 of Title 19, United States Code (19 U.S.C. 482, 1461, 1462, 1496, 1581, and 1582). Section 482 authorizes Customs to search vehicles and persons and to seize undeclared merchandise or merchandise imported contrary to law. Section 1461 authorizes Customs to inspect all merchandise and baggage brought into the United States

from contiguous countries. Section 1461 also authorizes Customs officers to require that owners of baggage open it or furnish keys for doing so.

Section 1462 authorizes Customs to inspect the contents of all baggage and vehicles brought into the United States. Section 1462 also authorizes Customs to seize and forfeit the contents of such imported baggage or vehicle which is subject to duty or which constitutes a prohibited importation. Section 1496 authorizes Customs to examine the baggage of people arriving in the United States. Section 1581(a) authorizes Customs to board vessels and vehicles and to examine, inspect and search the vessels or vehicles and everyone and everything thereon. Section 1582 authorizes the Secretary of the Treasury to write regulations concerning the search of persons and baggage. It also authorizes officers or agents of the United States Government to detain and search, under such regulations, any persons coming into the United States from foreign countries.

The statutes cited above grant Customs broad authority to inspect, search and seize baggage and vehicles coming into the United States. Sections 123.63 and 148.21, Customs Regulations (19 CFR 123.63 and 148.21) discuss Customs authority regarding examination of baggage and vehicles. Customs proposed to revise these regulations in a Notice of Proposed Rulemaking published in the Federal Register (59 FR 56014) on November 10, 1994, to more accurately reflect the fact that Customs has the statutory authority to open and examine baggage, vehicles, and compartments thereof without the permission of the owners. Of course, in many instances, Customs will first ask the owner or operator to unlock the vehicle, compartment, or baggage.

Analysis of Comments

The Notice of Proposed Rulemaking invited the public to comment on the proposed changes to the Customs Regulations. Two comments were received.

One comment was a suggestion to provide in the regulations that a Customs inspector may hire an outside contractor, such as a locksmith, to open or unlock baggage. This suggestion is beyond the scope of this rulemaking and may be addressed internally by Customs.

The other commenter suggested that Customs require its officers to assist the traveler in repacking his baggage when nothing contrary to the law is found during a baggage examination. Customs believes that such a requirement is legally unnecessary. Furthermore,