

0A82C Saps; thumbcuffs, leg irons, shackles, and handcuffs; straight jackets, plastic handcuffs, police helmets and shields; and parts and accessories, n.e.s.

Requirements

Validated License Required:

QSTVWYZ, except NATO, Australia, New Zealand and Japan.

Unit: \$ Value.

Reason for Control: FP (see Notes).

GLV: \$0.

GCT: No.

GFW: No.

Notes: 1. FP controls for crime control (human rights) apply to items controlled by 0A82 (see § 776.14 of this subchapter).

2. These items are subject to the United Nations Security Council arms embargo against Rwanda described in § 785.4 (a) of this subchapter.

6. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 10, Miscellaneous, a new ECCN 0A83D is added to read as follows:

0A83D Thumbscrews and specially designed implements of torture; and parts and accessories, n.e.s.

Requirements

Validated License Required:

QSTVWYZ and Canada.

Unit: \$ Value.

Reason for Control: FP (see Note).

GLV: \$0.

GCT: No.

GFW: No.

Dated: November 21, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

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FEDERAL TRADE COMMISSION

16 CFR Part 3

Duration of Existing Competition and Consumer Protection Orders

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Commission hereby issues a rule ("Sunset Rule") that terminates existing administrative orders when certain conditions have been met, consistent with the Commission's "Policy Statement Regarding Duration of Competition and Consumer Protection Orders" published in the Federal Register on August 16, 1995. Prior to the issuance of this rule, the Commission could only set aside the provisions of such orders upon petition of the respondent, or pursuant to show-

cause proceedings initiated *sua sponte* by the Commission. The rule reduces the administrative expense and burden associated with those procedures by automatically vacating certain order provisions that no longer serve the public interest.

EFFECTIVE DATE: January 2, 1996.

FOR FURTHER INFORMATION CONTACT:

Justin Dingfelder, Assistant Director for Enforcement, Division of Enforcement, Bureau of Consumer Protection, FTC, (202) 326-3017; Roberta Baruch, Deputy Assistant Director for Compliance, Bureau of Competition, (202) 326-2861.

SUPPLEMENTARY INFORMATION:

On September 1, 1994, the Commission published a policy statement that sunsetted Commission competition orders under certain conditions.¹ The Commission requested comment on the policy and on whether a similar policy should be applied to consumer protection orders.

On August 16, 1995, the Commission published a further "Policy Statement Regarding Duration of Competition and Consumer Protection Orders" in the Federal Register. 60 FR 42569. Under this Policy Statement, which superseded the Commission's 1994 Policy Statement, the Commission will ordinarily sunset future competition and consumer protection administrative orders automatically after 20 years, unless the Commission or the Department of Justice has filed a complaint (with or without an accompanying consent decree) in federal court to enforce such order pursuant to Section 5(l) of the Federal Trade Commission Act ("FTC Act"). This policy does not extend to federal court orders. The Commission also announced its intention to sunset existing administrative orders through rulemaking, rather than case-by-case determinations, and published a Notice of Proposed Rulemaking regarding the "Duration of Existing Competition and Consumer Protection Orders" in the Federal Register. 60 FR 42481 (August 16, 1995).

The Commission received 22 comments regarding the proposed rule, 21 of which support the issuance of the proposed rule. One comment, filed by the American Association of Retired Persons ("AARP"), opposes the proposed rule.² In addition, three of the 21 comments supporting the proposed rule urge the Commission to sunset existing administrative orders in less than 20 years.³ One of the 21 comments supporting the proposed rule urges the Commission to adopt (1) an expedited process for reviewing petitions to set aside consumer protection orders that are ten years old or older; and (2) a presumption that such petitions should be granted unless substantial contrary evidence is submitted on the record.⁴

² AARP opposes the sunset of core provisions in consumer protection orders (AARP took the same position when it commented on the Commission's 1994 Policy Statement). However, if the Commission decides to sunset consumer protection orders after 20 years, AARP endorses the proposal to extend the duration of any order where the government has filed a complaint to enforce the order while it remains in force. AARP contends that the proposed rule is unclear as to whether the Commission will be able to impose civil penalties as well as extend an order's duration by filing a complaint. AARP urges the Commission to state unambiguously that civil penalties may be imposed for violations of an order, the duration of which is extended under the proposed rule.

The Commission notes that the issuance of the rule will not affect the Commission's authority pursuant to Section 5(l) of the FTC Act to seek civil penalties for violations of an order that remains in effect. Complaints filed in federal court by the Commission or the Department of Justice pursuant to Section 5(l) of the FTC Act routinely seek civil penalties and will continue to do so.

³ Another comment supporting the proposed rule requested that the Commission clarify its policy by confirming that the reference date for computing the 20 year sunset period is the date of the order's initial issuance and not the date of any subsequent modification. As the Commission stated in its Policy Statement:

Unless an order modification expressly changes the duration of an order, such modification will not affect the duration of the order as determined by this Policy Statement.

60 FR at 42572 n.9.

⁴ One of the three comments described above urges the Commission to adopt a ten year sunset period for competition orders. Another urges the Commission to adopt a ten year sunset period for consumer protection orders. The last one urges the Commission to consider a sunset period shorter than 20 years. The Policy Statement explains why the Commission decided to sunset administrative orders after 20 years, 60 FR at 42573, as does the superseded 1994 Policy Statement, 59 FR at 45288. Furthermore, the Policy Statement explains why the Commission decided to sunset existing orders through rulemaking as opposed to the petitioning process:

The cost of the Commission retaining added discretion as to whether it should retain older orders, thereby requiring a case-by-case analysis with respect to each petition, likely exceeds the benefits of retaining older orders in extraordinary circumstances. By adopting a policy that does not require the Commission to exercise discretion with respect to individual orders, the Commission will conserve scarce resources and ensure equitable treatment of similarly situated respondents now subject to administrative orders.

¹ "Policy Statement With Request for Public Comment Regarding Duration of Competition Orders and Request for Public Comment Regarding Duration of Consumer Protection Orders," 59 FR 45286.

None of the comments provide any information or express any views that the Commission had not already considered in issuing its Policy Statement and the proposed rule. Accordingly, the Commission has determined to issue the proposed rule with no changes. The rule provides that, in general, all provisions of any existing administrative order will automatically sunset 20 years from the date that the order was issued.⁵ The rule establishes an exception, however, where a federal court complaint alleging a violation of an existing order was filed (with or without an accompanying consent decree) within the last 20 years, or where such a complaint is subsequently filed with respect to an existing order that has not yet expired. In that event, the order will run for another 20 years from the date that the most recent complaint was or is filed with the court, unless the complaint was or is dismissed, or the court has ruled or rules that the respondent did not violate any provision of the order, and the dismissal or ruling was or is not appealed (or was or is upheld on appeal). The Commission's order will remain in effect while the court complaint and any appeal is pending.

The filing of a court complaint will not affect the duration of an order's application to any respondent that is not named as a defendant in the complaint. The issuance of this rule does not affect the Commission's ability to consider whether a complaint alleging order violations has ever been filed against a respondent, and any other relevant circumstances, in determining whether to grant or deny a subsequent petition by a respondent to reopen and set aside an order on the basis of changes in law, fact, or the public interest. See Commission Rule 2.51, 16 CFR 2.51.

Regulatory Flexibility Act

On the basis of information currently available to the Commission, it is anticipated that the rule will result in the elimination of a substantial number of existing orders that no longer serve the public interest. Many of the comments supporting the issuance of the rule state that it will reduce costs and stimulate competition. Accordingly,

the Commission has determined at this time that the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis, because the rule will not have a significant impact on a substantial number of small entities within the meaning of the Act. 5 U.S.C. § 605. This notice serves as certification to that effect for purposes of the Small Business Administration.

Effective Date

The rule will take effect on January 2, 1996. Petitions to stay, in whole or in part, the termination of an order pursuant to the rule shall be filed pursuant to Commission Rule 2.51, 16 CFR 2.51. In the case of orders that have been in effect for at least 20 years, the rule provides respondents with 30 days to file such a petition before the order is automatically terminated by the rule. Pending the disposition of such a petition, the order will be deemed to remain in effect without interruption.

List of Subjects in 16 CFR Part 3

Administrative practice and procedure, Claims, Equal access to justice, Lawyers.

Accordingly, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A, of the Code of Federal Regulations as follows:

PART 3—[AMENDED]

1. The authority for Part 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

2. Section 3.72 is amended by adding a new paragraph 3.72(b)(3) to read as follows:

§ 3.72 Reopening.

* * * * *

(b) * * *

(3) *Termination of existing orders.* (i)

Generally. Notwithstanding the foregoing provisions of this rule, and except as provided in paragraphs (b)(3) (ii) and (iii) of this section, an order issued by the Commission before August 16, 1995, will be deemed, without further notice or proceedings, to terminate 20 years from the date on which the order was first issued, or on January 2, 1996, whichever is later.

(ii) *Exception.* This paragraph applies to the termination of an order issued before August 16, 1995, where a complaint alleging a violation of the order was or is filed (with or without an accompanying consent decree) in federal court by the United States or the Federal Trade Commission while the order remains in force, either on or after August 16, 1995, or within the 20 years

preceding that date. If more than one complaint was or is filed while the order remains in force, the relevant complaint for purposes of this paragraph will be the latest filed complaint. An order subject to this paragraph will terminate 20 years from the date on which a court complaint described in this paragraph was or is filed, except as provided in the following sentence. If the complaint was or is dismissed, or a federal court rules or has ruled that the respondent did not violate any provision of the order, and the dismissal or ruling was or is not appealed, or was or is upheld on appeal, the order will terminate according to paragraph (b)(3)(i) of this section as though the complaint was never filed; provided, however, that the order will not terminate between the date that such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal. The filing of a complaint described in this paragraph will not affect the duration of any order provision that has expired, or will expire, by its own terms. The filing of a complaint described in this paragraph also will not affect the duration of an order's application to any respondent that is not named in the complaint.

(iii) *Stay of Termination.* Any party to an order may seek to stay, in whole or part, the termination of the order as to that party pursuant to paragraph (b)(3) (i) or (ii) of this section. Petitions for such stays shall be filed in accordance with the procedures set forth in § 2.51 of these rules. Such petitions shall be filed on or before the date on which the order would be terminated pursuant to paragraph (b)(3) (i) or (ii) of this section. Pending the disposition of such a petition, the order will be deemed to remain in effect without interruption.

(iv) *Orders not terminated.* Nothing in § 3.72(b)(3) is intended to apply to *in camera* orders or other procedural or interlocutory rulings by an Administrative Law Judge or the Commission.

By direction of the Commission.

Donald S. Clark,
Secretary.

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⁶⁰ FR at 42572.

⁵ Orders that are 20 years old or older will sunset on January 2, 1996. Certain provisions in existing administrative orders will expire, or have already expired, according to their own terms, and the rule will not affect the duration of those provisions. The rule also will not revive any order provision that the Commission has previously reopened and set aside. See 16 CFR 2.51 & 3.72. The rule will not apply to *in camera* orders or other procedural or interlocutory rulings by an Administrative Law Judge or the Commission.