**Authority:** Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

**§ 73.55 [Amended]**

2. In § 73.55, paragraph (d)(8) is removed and paragraph (d)(9) is redesignated as (d)(8).

Dated at Rockville, Maryland, this 2nd day of May, 1995.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Executive Director for Operations.*

[FR Doc. 95–11482 Filed 5–9–95; 8:45 am]

BILLING CODE 7590–01–P

## FEDERAL TRADE COMMISSION

## 16 CFR Part 444

## Regulatory Flexibility Act Review of Trade Regulation Rule Concerning Credit Practices

**AGENCY:** Federal Trade Commission.

**ACTION:** Termination of review.

**SUMMARY:** In accordance with the Regulatory Flexibility Act (5 U.S.C. 601) (''the RFA'') and a published plan for Periodic Review of Commission Rules (46 FR 35118 (July 7, 1981)), the Federal Trade Commission solicited comments and data on whether the Trade Regulation Rule Concerning Credit Practices (16 CFR part 444) (the ''Rule'') has had a significant impact on a substantial number of small entities, and if it has, whether the Rule should be amended to minimize any significant impact on small entities (59 FR 18009 (April 15, 1994)). The Commission also requested comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of it systematic review of all current Commission regulations and guides. The notice required comments to be submitted to the Commission no later than June 14, 1994. Based on the comments received, which are summarized in this notice, the Commission finds that there is an insufficient basis to conclude that the Rule has had a significant economic impact upon a substantial number of number entities of otherwise merits revision. The Commission is therefore terminating this review.

**DATES:** This action is effective as of May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Wilmore, Attorney, Division of Credit Practices, Bureau of Consumer Protection, Room S4429, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580. Tel: (202) 326–3224.

**SUPPLEMENTARY INFORMATION:** The RFA requires the Federal Trade Commission to conduct a periodic review of rules issued by the Commission that have or will have a significant economic impact on a substantial number of small entities. For the purpose of the RFA review, the term ''small entity'' is defined under the Small Business Size Standards, codified at 13 CFR part 121 and revised by the Small Business Administration (49 FR 5024–5048 (Feb. 9, 1984)). In addition, the Commission has determined, as a part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission. This periodic review is conducted in accordance with the Commission's plan for periodic review of rules (46 FR 35118 (July 7, 1981)).

### I. Background and Summary

The Commission promulgated the Rule on March 1, 1984, (49 FR 7740), and it became effective on March 1, 1985. The Rule applies to lenders and retail installment sellers (creditors) and prohibits them from directly or indirectly taking or receiving from a consumer an obligation that includes certain contract provisions determined to be unfair, failing to provide a notice to potential cosigners, or using an unfair method of calculating late fees.

In promulgating the Rule, the Commission found that: (1) consumers suffers substantial economic and non-economic injury from creditors' use of the remedies that the Rule restricts; (2) consumers themselves cannot reasonable avoid these remedies or avoid the harsh consequences of the remedies by avoiding default; and (3) the overall costs to consumers are greater than the countervailing benefits that the use of these remedies provide to consumers or creditors.[1]

The notice that initiated this review requested comments on whether any part of the Rule has had a significant impact on a substantial number of small entities and, if so, whether any such impact can be reduced consistent with the operation of the Rule.

In addition, the Commission requested comments on a number of other issues relating to the operation of the Rule.

### II. Public Comments

In response to the **Federal Register** notice, the Commission received a total of seven comments, four from creditor trade associations[2] and three from legal organizations representing consumers.[3] The commenters' responses to the questions posed in the notice are summarized and analyzed below. Unless otherwise noted, the Commission is not aware of other information bearing on the issues discussed.

*1. Continuing Need for the Rule*

Two commenters directly addressed the question of the continuing need for the Rule. The UAW–GM and NCLC stated that consumers continue to need the protection of the Rule. According to Williams & Eoannou, consumers have benefited from the Rule because it ''eliminated the use of a limited number of onerous and overreaching boilerplate contract provisions * * * the limited utility of which in collecting debts was more than offset by their brutally invasive and disruptive impact on consumers and their families.'' No commenter discussed any costs imposed on consumers by the Rule.

*2. Proposed Changes to the Rule to Benefit Consumers*

All of the commenters made some recommendation regarding changes to the Rule. Except as noted, the commenters who proposed changes to benefit consumers did not discuss the cost to creditors of those changes.

[1] See Credit Practices Rule: Statement of Basis and Purpose and Regulatory Analysis (SBP), 49 FR 7740, 7743–7745 (1984).

[2] Comments were received from the Credit Union National Association (''CUNA''), which represents 5,000 state and 7,000 federal credit unions in the United States; the CUNA Mutual Insurance Group (''CMIG''), which provides form contracts and compliance support, as well as insurance coverage, to CUNA members; the Illinois Credit Union System, which represents 645 state and federal credit unions in Illinois; and the Missouri Bankers Association, a trade association representing 500 commercial banks in Missouri.

[3] Comments were received from the National Consumer Law Center, Inc. (''NCLC''); the UAW–GM Legal Service Plan (''UAW–GM''), which provides legal services to auto workers and retirees; and the law firm of Williams & Eoannou, which represents consumer debtors in bankruptcy proceedings and in cases involving possible violations of federal and state credit laws.

a. Security Interests in Household Goods

i. Definition of Household Goods

One commenter, UAW–GM, stated that the Rule's definition of household goods is too limited. According to UAW–GM, consumers would be better protected and the law would be more consistent with other federal formulations if the definition of household goods under the Rule were changed to parallel the household goods exemption and lien-avoidance provisions of the Bankruptcy Code, 11 U.S.C. 552 (d)(3) and (f)(2).[4] The exemptions provided under the Bankruptcy Act include items not covered by the Rule, notably books, animals, crops, and musical instruments, but do not include the Rule's coverage of wedding rings and personal effects.

The Commission did not address this question directly at the time that it promulgated the Rule, but did indicate that it was aware of the lien-avoidance provision of the Bankruptcy Act. The SBP refers to the fact that 1978 amendments to the Bankruptcy Act created an exception to the old rule that secured loans survived bankruptcy for those loans secured by blanket security interests in household goods, 11 U.S.C. 552(f)(2), discussed above. The reference occurs in a discussion of the treatment of the refinancing of purchase money security interests and does not indicate that the Commission ever considered conforming the definition of household goods in the Rule to the definition contained in the Bankruptcy Act provision discussed.[5]

Since bankruptcy is one of the situations in which a creditor's security interest in the personal possessions of the debtor is most likely to be at issue, a consistent federal standard as to which items are protected is sensible. However, we have no evidence that the lack of such a parallel standard is sufficiently problematic to warrant amending the rule.

Alternatively, UAW–GM proposed that the list of specific items included in the definition be described as illustrative and not exclusive.[6] In the SBP, the Commission stated its intention to limit coverage to necessities and to the class of goods for which the injury to consumers from a security interest exceeds offsetting benefits.[7] Conceivably, the Rule could be expanded to apply to any other items meeting that test. However, this could raise certain enforcement difficulties. It is not clear that, if a creditor took a security interest in items not enumerated as household goods, the Commission could establish the requisite knowledge on the part of the creditor to bring a civil penalty action for a rule violation.[8] Again, we have no evidence of problems with the Rule's current definition of household goods sufficient to justify an amendment to the Rule.

ii. Property Insurance

The NCLC presumes that creditors take security interests in the consumer's personal property in order to sell excessively priced property insurance to the consumer and that the Rule should be amended to address this problem. The Truth in Lending Act and Regulation Z impose disclosure requirements relating to the sale of property insurance by creditors.[9] Given the legal restrictions on the Commission's ability to regulate the business of insurance, this agency may not have the authority to address the pricing of insurance directly or the expertise to determine what constitutes fair pricing.[10] We found no evidence to justify attempting to do so as an amendment to the Rule.

iii. Cross-Collateralization

Williams & Eoannou observed that the use of cross-collateral security clauses in revolving charge agreements is increasing. The commenter notes that the Rule as initially proposed would have prohibited such clauses, and that that provision was deleted from the final rule.[11] The Commission is urged by the commenter to amend the Rule to prohibit the use of cross-collateral.

The Commission did not adopt the provision initially because it found insufficient evidence in the record that the use of cross-collateral clauses was prevalent or that cross-collateral, when used, caused any notable degree of consumer injury. It, therefore, concluded that the benefits of the provision would not outweigh its costs.[12] As the comment did not provide specific information about the prevalence of cross-collateralization or the degree of injury resulting from its use, we find no basis for revising that conclusion.

b. Notice to Cosigners

Commenters addressed various aspects of the Rule's cosigner provision, which will be discussed in turn below.

i. Definition of Cosigner

UAW-GM stated that the cosigner definition should be clarified. The Rule defines a cosigner as a person who is ''liable for the obligation of another person without compensation.'' A person is considered not to have received compensation if that person does not receive goods, services, or money in return. According to the commenter, in connection with the financing of automobiles, the cosigner's name is sometimes placed on the title to the vehicle with the name of the purchaser in order to avoid the Rule's protections for cosigners.

The commenter states that this is done without the cosigner's knowledge in situations where the cosigner has no actual access to the vehicle securing the loan. The cosigner's name on the title suggests that he has received an ownership interest in the car in exchange for his commitment to pay and is, therefore, not a cosigner within the meaning of the Rule. According to UAW–GM, the Commission should amend the Rule to make clear that, in the absence of an actual possessory interest in the security, the Rule should apply.

At the time the Rule was promulgated, the Commission

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[4] Those provisions of the Bankruptcy Act provide an exemption for:

The debtor's interest, not to exceed $200 in value in any particular item or $4,000 in aggregate value, in household furnishing, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for * * * personal, family, or household use. * * *

[5] See SBP at page 7767.

[6] In contrast, the Missouri Bankers Association stated that there should be no expansion of the definition of household goods and that any expansion would restrict the collateral that could be provided by consumers who are not homeowners.

[7] See SBP at pages 7767 and 7768.

[8] Section 5(m)(1)(A) of the FTC Act states that:

The Commission may commence a civil action to recover a civil penalty * * * against any person * * * which violates any rule under this Act respecting unfair or deceptive acts or practices * * * with *actual knowledge or knowledge fairly implied* on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. (Emphasis added.)

[9] Section 226.4 of Regulation Z, which implements the Truth in Lending Act, allows creditors to exclude such insurance premiums from the finance charge if the insurance coverage may be obtained from a person of the consumer's choice, if that fact is disclosed to the consumer, and if the coverage is obtained through the creditor, the insurance premium and the term of the insurance are disclosed.

[10] See McCarran-Ferguson Act, 15 U.S.C. 1012.

[11] According to the SBP:

Cross-collateralization occurs when goods purchased from a retailer on credit are used to secure credit extended for subsequent purchases until the account is cleared. A provision of the proposed rule that we have decided not to promulgate would have restricted cross-collateral clauses in installment sales contracts. Essentially, the provision would have required first-in, first-out accounting for credit contracts covering multiple purchases.

SBP, 49 FR 7740, 7786 (March 1, 1984).

[12] See SBP at page 7786.

considered comments stating that the cosigner provisions of the Rule could be avoided by requiring potential cosigners to become co-applicants for credit. In response, the Commission revised the final Rule to define as a cosigner ''any person whose signature is obtained after the initial applicant is told that the signature of another person is necessary.'' [13] The cosigner definition also states that:

> A person is a consigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.[14]

Thus, the Commission clearly intended that the definition of cosigner turn on the circumstances under which the person became obligated to pay rather than how the person is characterized by the creditor on the documents evidencing the transaction. Accordingly, the current Rule would apply to the situation described by the commenter.

In addition, the Rule currently states that it is a deceptive act or practice for a creditor, ''directly or indirectly, to misrepresent the nature of extent of cosigner liability to any person.''[15] Therefore, it should be possible to challenge creditor practices that seek to avoid the effect of the rule by concealing the cosigner's status. Such a challenge may be made using the existing provision without the necessity of amending the Rule.

ii. Cosigner Liability

UAW–GM also stated that the Rule should provide that a creditor cannot collect from a cosigner who was not given the required Notice. The commenter observed that the Federal Reserve Board (''FRB'') Staff Guidelines on that agency's version of the Rule [16] say that an attempt to collect from a cosigner who did not receive the Notice is a violation of the Rule.[17]

The SBP does not indicate that the Commission considered the question of the private enforceability of consumer credit contracts entered into in violation of the Rule. The FRB, which followed the Commission's lead, did consider this question, as did the Federal Home Loan Bank Board (''FHLBB'') [18]. Making a contract entered into in violation of the Rule unenforceable against the cosigner could potentially provide a private enforcement mechanism for consumers and give creditors an additional incentive to comply. However, the commenter provided no information about the actual experience of cosigners with creditors subject to the other regulatory agencies' versions of the Rule, including whether their versions effectively prevented violations or provided relief to consumers. Consequently, the Commission lacks sufficient information to decide that a proceeding to amend the Rule in such a manner is justified.

iii. The Notice as a Separate Document

The three credit union-related associations asked that the Rule be amended to permit creditors to include the Notice in the documents evidencing the consumer credit obligation rather than requiring that it be a separate document. The commenters noted that the versions of the Rule promulgated by the National Credit Union Administration (''NCUA''), the FRB, and the OTS do not require the notice to be on a separate document. While the commenters requested this change primarily for the benefit of creditors, the Illinois Credit Union System also expressed the view that consumers would be better served if they received a document that included both the Notice and the terms of the credit obligation.

In the SBP, the Commission explained its reason for requiring that the Notice be a separate document:

> The purpose of this requirement is to assure that the cosigner will actually become aware of the notice before becoming obligated. Thus, the notice document cannot be affixed to other documents unless the notice document appears before any other document in a package, and it may not include any other statement * * *.[19]

Thus, if the result of combining the Notice with the contract were to make the Notice's message less meaningful to the consumer, as the Commission believed, this benefit would come with a substantial cost to the consumer. On balance, and in the absence of information about the experience of cosigners with creditors subject to the other regulatory agencies' versions of the Rule, we have determined to retain the existing cosigner notice provision.

c. Other Rule Provisions

i. Third Party Contacts

The NCLC stated that many creditors continue to contact third parties in order to coerce consumers into paying debts. When the Rule was enacted, the Commission considered, but rejected, a provision to prohibit most creditor contacts with third parties.[20] The Commission stated that the record in the rulemaking proceeding did not contain evidence of widespread abusive third party contacts, that the cost of the provision would outweigh its benefits, and that the Commission considered a case-by-case approach more appropriate ''to stem abusive third party contacts without restricting legitimate contacts.''[21] We feel that this approach has been adequate to deter abusive third party contacts.[22]

ii. Attorney's Fees

The NCLC also stated that consumers who pay creditors' attorney's fees are routinely overcharged to subsidize the attorney's unsuccessful collection efforts against other consumers. The Commission considered, but rejected, a Rule provision prohibiting credit contract clauses requiring that debtors pay attorney's fees incurred by creditors in debt collection.[23]

The Commission expressed the view that, because the proposed Rule provision would not have restricted the power of courts to impose attorney's fees on defaulting consumers under state law, the provision might have had little effect. While the Commission found that most creditors included attorney's fee provisions in contracts when permitted to do so by state law, it found that the cost of restricting this practice outweighed the benefits of doing so. Although the Commission found that attorney's fees tend to be based on a percentage of the amount of the outstanding obligation, and sometimes bear little relation to the amount of work performed by the attorney, it stated specifically that this does not imply that debtors overcompensate creditors for their attorney's fees.[24] Thus the Commission previously rejected the premise of the NCLC comment. We have received no information in connection with this

[13] *Id.* at page 7778.

[14] 16 CFR 444.1(k).

[15] 16 CFR 444.3(a)(1).

[16] 50 FR 47,036 (1985) and 51 FR 39,646 (1986), Q14(a)-2.

[17] Section 18(f) of the Federal Trade Commission Act requires, within 60 days after the Commission issues a trade regulation rule declaring certain acts or practices to be unfair or deceptive, that the bank regulatory agencies issue a substantially similar rule for creditors subject to their jurisdiction unless the agencies find that the practices of their creditors are not unfair or deceptive or that to promulgate such a rule would ''seriously conflict with essential monetary and payment systems policies. . . .'' Accordingly, the FRB and other agencies issued their own versions of the Rule.

[18] The FHLBB is now the Office of Thrift Supervision (''OTS''), Department of the Treasury.

[19] SBP at page 7778.

[20] *Id.* at pages 7785–7786.

[21] *Id.*

[22] Since the Rule was enacted, the Commission has brought one case against a creditor for abusive third party contacts and other unfair or deceptive debt collection practices. *See Avco Fin. Serv.*, 104 F.T.C. 485 (1984) (Consent Agreement).

[23] *See* SBP at pages 7784–7785.

[24] *Id.*

review that would lead us to revise that position.

*3. Impact of the Rule on Creditors*

CUNA, the only creditor representative to discuss the subject, stated that ''Generally, credit unions have not reported any significant economic or regulatory impact on their operations due to this rule.''

*4. Proposed Changes to the Rule to Benefit Creditors*

The Missouri Bankers Association posited that the Rule provision prohibiting the pyramiding of late fees is not sufficiently clear as to what constitutes a late fee.[25] The Association questioned whether a returned check fee, for example, would be a late fee under the Rule, and, if so, whether the creditor would be permitted under the Rule to collect it.

This comment calls for an explanation of the Rule, rather than a modification to it.[26] The Rule does not prohibit a creditor from collecting a late fee, nor would it prohibit a creditor from collecting a returned check fee. The Rule states that, where a charge is assessed with respect to only one late payment and that charge remains unpaid, the creditor may not for that reason deem all subsequent payments to be late or incomplete and assess late charges with respect to those payments as well.

In the example provided by the commenter, if one check was returned for insufficient funds, the creditor could assess a returned check fee if permitted by state law and the terms of the contract to do so. What the creditor could not do, assuming the consumer did not promptly pay the returned check fee, is to declare all subsequent payments to be late or incomplete solely for that reason and assess fees on those payments.

*5. Effect on Other Regulations*

Except for the comparisons to the Federal Reserve Board and other agencies' versions of the Rule discussed above, no commenter discussed the Rule's effect on other federal, state or local laws or regulations.

*6. Effect of Technology or Economic Conditions*

No commenter discussed the effects, if any, of changes in relevant technology or economic conditions on the Rule.

*7., 8., and 9. Effect on Small Businesses*

According to CUNA, the Rule applies to 5,000 state-chartered credit unions.[27] CMIG states that the majority of those credit unions have assets of $100 million or less. Thus, they are considered to be small entities for the purposes of the RFA.[28] The only burden that the commenters who claim to represent such entities identified as having been imposed by the Rule on small entities was the requirement discussed above of providing the cosigner notice as a separate document.

*10. The Notice to Cosigner*

No commenter discussed the wording of the notice.

*11. Effect on the Cost and Availability of Credit*

As mentioned above, CUNA stated that its members generally reported no significant economic impact on their operations due to the Rule. Williams & Eoannou stated that the Rule has had no negative impact on the cost or availability of credit and that the use of credit by consumers has increased since the Rule became effective. NCLC provided statistics purporting to show the increase in consumer debt in the years following the Rule's implementation. In its view, this increase can be explained in part by increased consumer demand for what became, as a result of the Rule, a more attractive type of credit. No commenter suggested any adverse economic impact from the Rule.

*12. Disclosure Alternative to the Rule*

No commenter addressed the question of an alternative Rule that would require disclosure of the existence of contract provisions that might cause injury to consumers, as opposed to restricting the use of such provisions.

**III. Conclusion**

The Notice attracted limited public interest. The discussion of issues relating to small entities, the parties protected by the RFA, was minimal. A number of varying suggestions were made to expand the Rule, but none of these had extensive support.

After carefully considering the comments, the Commission believes that they do not present a sufficient basis to conclude that the Rule has had a significant impact on a substantial number of small entities. Similarly, none of the other issues raised in the comments merits revision of the Rule at this time. The Commission is therefore terminating this review.

**List of Subjects in 16 CFR Part 444**

Federal Trade Commission, Consumer credit contracts, Consigner disclosures, Trade practices, Truth in Lending.

**Authority:** The Regulatory Flexibility Act, 5 U.S.C. Section 601 (1980).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95–11360 Filed 5–9–95; 8:45 am]

BILLING CODE 6750–01–M

[25] The three credit union-related associations asked that the Rule be amended to permit creditors to include the Notice in the documents evidencing the consumer credit obligation rather than requiring that it be a separate document, as discussed above.

[26] The Commission has handled inquiries of this nature through staff interpretation letters, which are placed on the public record. To date, more than 70 such letters interpreting the Rule have been issued.

[27] Federally-chartered credit unions are subject to the NCUA's version of the Rule.

[28] See Small Business Size Regulations, 13 CFR Part 121.601.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 500, 582, and 589

**[Docket No. 94G–0239]**

## GRAS Status of Propylene Glycol; Exclusion of Use in Cat Food

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its regulations to exclude from generally recognized as safe (GRAS) status the use of propylene glycol (PG) in or on cat food. This proposed action is based on FDA's review of currently available information which has raised significant questions about the safety of this use. Semimoist pet foods containing PG were not in existence when the GRAS status for use in animal feeds was established, thus this GRAS determination does not apply to the newly intended uses of PG. FDA is proposing that PG in or on cat food is a food additive and is not prior sanctioned for this use, and subject to certain provisions of the Federal Food, Drug, and Cosmetic Act (the act).

**DATES:** Written comments by July 24, 1995.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David A. Dzanis, Center for Veterinary Medicine (HFV–222), Food and Drug