

Concurring Statement of Commissioner Julie Brill

Federal Trade Commission Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (the "Cooling-Off Rule")

January 6, 2015

Today, the Commission announces that it has amended the Commission's Cooling-Off Rule.<sup>1</sup> Through this action, the Commission retains the exclusionary limit for some "door-to-door" sales, but raises it for others. I write separately to voice my strong support for retaining the exclusionary limit for sales in consumers' homes; note my skepticism, based on the record before us, of the need to raise the exclusionary limit for sales in a seller's transient location; and as a result, to strongly encourage states to engage in detailed fact finding about local conditions before raising any exclusionary limits under their own state cooling-off laws and rules.

The Cooling-Off Rule was designed to prevent unfair and deceptive practices that occur outside a seller's permanent place of business.<sup>2</sup> The Cooling-Off Rule uses the nomenclature "door-to-door" sales to describe the sales that it covers and includes within the definition of "door-to-door" sales both sales in a consumer's home as well as sales at a seller's transient location.<sup>3</sup> Sales in consumers' homes and at a seller's transient location have long raised consumer protection concerns, as some sellers employ deceptive and unfair practices, including high pressure sales tactics, misrepresenting the quality of goods and placing inappropriate roadblocks to obtaining refunds, including simply disappearing before

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<sup>1</sup> Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations 16 C.F.R. 429.

<sup>2</sup> Id.; see also, Cooling-Off Period for Door-to-Door Sales, Trade Regulation Rule Statement of its Basis and Purpose 37 FR 22933, 22937 (Oct. 26, 1972)

<sup>3</sup> 16 C.F.R. 429.0 (a) (definition of "Door-to-Door Sale").

consumer realizes that he or she has been scammed. The Cooling-Off Rule's primary mechanism for protecting consumers from such unscrupulous

commenters supported a blanket increase of the exclusionary limit to \$130.<sup>9</sup> The vast majority of commenters—twenty-eight—opposed the proposed blanket increase to \$130. These twenty-eight commenters cited a variety of reasons for their opposition. Most of them expressed general concerns about the need for protections against high pressure and predatory sales practices.<sup>10</sup> The Massachusetts Attorney General, the California Consumer Affairs Association, and several chapters of the Better Business Bureau (“BBB”) cited serious concerns about deceptive and high pressure sales tactics by traveling salespeople for transactions well under \$150.<sup>11</sup> Some commenters stated that, while the price of goods and services may have risen with inflation, \$25 is still a significant amount of money for consumers.

After consideration of commenters' concerns, the Commission today decided to (1) retain the \$25 limit for door-to-door sales made at a buyer's residence and (2) amend the Rule to increase the limit from \$25 to \$130 for sales that occur at transient locations.

I fully support the retention of the \$25 exclusionary limit for sales in consumers' homes. While the expansion of Internet marketing has changed the business model of many direct sales companies, door-to-door sales continue to be a concern, especially for consumers who are the targets of aggressive high pressure or deceptive sales tactics in their own homes. AARP and the BBB have identified in-home door-to-door sales as being among the top scams targeting senior citizens.<sup>3</sup> T



concerns about only in-home sales, or both in-home and transient sales. Many of them employed the term “door-to-door sales” in discussing their concerns.<sup>22</sup> However, these commenters could simply (and correctly) have been employing the federal rule’s definition of “door-to-door” sales which incorporates both in-home sales and sales in transient locations under the umbrella of “door-to-door” sales<sup>23</sup> rather than attempting to limit their concerns to in-home sales.

As the Commission correctly notes in today’s Federal Register Notice of Issuance, the federal Cooling-Off Rule does not preempt state laws to the extent that such rules are not “directly inconsistent” with the federal Cooling-Off Rule.<sup>24</sup> More protective state laws – those that have lower exclusionary limits, no exclusionary limits, or broader coverage of the types of sales that qualify for the cooling-off period and notice requirements of their rules – are not “directly inconsistent” with the federal rule, and so are not preempted.<sup>25</sup>

Indeed, states have long had their own cooling-off rules that in many cases provide consumers with protections greater than those provided by the federal rule. Fourteen states and the District of Columbia have a state cooling-off rule.<sup>26</sup> Some states, like Arizona,<sup>27</sup> North

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<sup>22</sup> See Mike A. Jacques, O’Gorman Comment at 2; Adam Offenbecker Comment at 1; Gowen Consulting Comment at 1.

<sup>23</sup> See supra note 3.

<sup>24</sup> See Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, Rule Amendment 80 FR 1329, 1331 (Jan. 9, 2015) (citing 16 C.F.R. 429.2).

<sup>25</sup> Id.

<sup>26</sup> Washington is the only state with no law or regulation providing a cooling-off rule, and so it relies entirely on the federal rule. Washington has laws in place that give consumers a right to cancel contracts for specific types of goods or services, including camping clubs and health club memberships, credit repair services, business opportunities,

Carolina,<sup>28</sup> and Illinois,<sup>29</sup> cover only sales in consumers' homes, with exclusionary limits ranging from zero to \$25. Most states cover both in-home sales and sales at transient locations and once again these exclusionary limits range from zero to \$25.<sup>30</sup>

today's amendment to the federal Cooling Off Rule as a signal that they should follow suit and raise the exclusionary limit of their respective cooling off rules for sales in transient locations. Indeed, the often highly localized nature of potentially deceptive practices involving sales in transient locations puts states in the best position to determine the wisdom of raising their own exclusionary limits for sales in transient locations. I strongly encourage any state that may consider following the course of action taken by the Commission today to engage in a more focused effort to gather evidence about potentially unscrupulous activities involving transient sales in their jurisdictions