Federal Reserve System, Washington, D.C. 20551, not later than September 8, 1995. Any request for a hearing on this proposal must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. The notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, August 10, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–20232 Filed 8–15–95; 8:45 am]

BILLING CODE 6210–01–F

National Westminster Bank PLC, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 30, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. National Westminster Bank PLC, London, England; Natwest Holdings Inc., New York, New York; and National Westminster Bancorp Inc., Jersey City, New Jersey; to acquire Natwest Leasing Corporation, New York, New York (Company), and thereby engage in making, acquiring, or servicing loans or other extensions of credit for Company's own accounts or for the account of others, such as would be made, acquired or serviced by a commercial finance company, pursuant to § 225.25 (b)(1) of the Board's Regulation Y; in leasing personal and real property having a maximum estimated residual value of 25 percent of the acquisition cost of the property, and to act as an agent, broker or adviser in leasing such property, pursuant to § 225.25(b)(5)(i) of the Board's Regulation Y; and in high residual value leasing of tangible personal property, and to act as agent, broker or adviser in leasing such property, in transactions in which the lessor would be allowed to rely upon an estimated residual value in excess of 25 of the acquisition cost of the property, pursuant to § 225.25(b)(5)(ii) of the Board's Regulation Y. These activities will be conducted worldwide.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Keystone Financial, Inc., Harrisburg, Pennsylvania; to acquire Martindale Andres & Company, Inc., West Conshohocken, Pennsylvania, and thereby engage in investment advisory services, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

C. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Financial Bancorp, Hamilton, Ohio; to acquire Independent Bankers Life Insurance Company of Indiana, Roachdale, Indiana, and thereby engage in underwriting credit life, accident, and health insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted within the State of Indiana.

D. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Carroll County Bancshares, Inc., Carroll, Iowa; to establish a wholly owned industrial loan company, Carroll Credit, Inc., Carroll, Iowa, which will acquire a substantial portion of the assets of Personal Lenders, Inc., Carroll, Iowa, and thereby engage in operating an industrial loan company, pursuant to § 225.25(b)(2) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 10, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–20234 Filed 8–15–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Policy Statement Regarding Duration of Competition and Consumer Protection Orders

AGENCY: Federal Trade Commission.

ACTION: Notice of policy statement.

SUMMARY: This notice describes the Federal Trade Commission's Policy Statement regarding the duration of future and existing administrative cease and desist orders as well as federal district court orders in competition and consumer protection matters. Under this Policy Statement, the Commission will ordinarily terminate (''sunset'') future competition and consumer protection administrative orders automatically after twenty 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(1) of the Federal Trade Commission Act (''FTCA)''. This policy will not extend to federal court orders. The Commission also intends to terminate each existing administrative order twenty years after it was issued, 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(1) of the FTCA during the twenty years preceding the adoption of the Policy Statement, or unless such a complaint is filed after the adoption of the Policy Statement and within twenty years after the order's issuance. The Commission intends to implement its new policy with respect to existing administrative orders through rulemaking.

In adopting this Policy Statement, the Commission considered comments filed in response to the Commission's ''Policy Statement With Request for Public Comment Regarding Duration of Competition Orders and Request for Public Comment Regarding Duration of Consumer Protection Orders,'' published in the Federal Register on September 1, 1994. 59 Fed. Reg. 45286. This new Policy Statement will supersede the Policy Statement Regarding Duration of Competition Orders adopted on July 22, 1994. In addition, the Commission is publishing and seeking comment on a Notice of Proposed Rulemaking to implement its policy with respect to existing administrative orders. The Commission is also soliciting comment regarding this Policy Statement.

DATES: Comments must be received on or before September 15, 1995.

ADDRESSES: Written comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. & Pa. Ave. N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Donald S. Clark, Secretary, Federal Trade Commission, (202) 326–2514; Roberta Baruch, Deputy Assistant Director for Compliance, Bureau of Competition, (202) 326–2861; or Justin Dingfelder, Assistant Director for Enforcement, Bureau of Consumer Protection, (202) 326–3017.

SUPPLEMENTARY INFORMATION: The Commission adopted its existing policy regarding the duration of competition orders on July 22, 1994. Under that policy, the Commission presumes that core provisions in future competition administrative orders and federal court orders should ordinarily terminate automatically after twenty years.[1] The Commission also presumes that all supplemental provisions in future competition orders should sunset after no more than ten years.[2] In addition, in the context of petitions to reopen and vacate existing competition administrative orders, the Commission applies a rebuttable presumption that the public interest warrants terminating orders that have been in force for more than twenty years. The notice announcing this policy also requested public comment on whether consumer protection orders also should be sunsetted.

The Commission received 23 comments in response to its invitation. The commenters expressed nearly unanimous support for the Commission's current policy of terminating competition orders. However, most of the commenters recommended that the Commission amend the policy statement by shortening the sunset period for new competition orders and by terminating existing orders automatically rather than applying a presumption in favor of termination in response to petitions to reopen.

Of the 23 commenters, 19 supported adopting a sunset policy for both future and existing consumer protection orders, three opposed it, and one did not address the issue. The three commenters opposing sunsetting consumer protection orders were the FTC-Working Group of the National Association of Attorneys General (''NAAG''), the American Association of Retired Persons (''AARP''), and the Center for Science in the Public Interest (''CSPI'').

The three commenters who opposed sunsetting consumer protection orders argued that such action is unnecessary because consumer protection orders merely require respondents to refrain from unfair or deceptive behavior that is unlawful under any circumstances, without respect to changes in market, organizational, or other conditions. AARP asserted that the absence of Commission action in a particular area does not necessarily indicate that the practices proscribed by earlier orders in that area have ceased to be illegal. CSPI asserted that the reopening process serves as an effective procedure for relief for companies and individuals that find themselves subject to outdated orders. The FTC–NAAG Working Group suggested that the requirements of complying with Commission orders might have the potential to reduce company costs by heightening the sensitivity of company personnel to consumer protection law issues, thus reducing the likelihood of having to defend against allegations regarding future violations.

The commenters who favored sunsetting consumer protection orders advanced considerations that are essentially the same as those that the Commission considered in deciding to sunset competition orders. In their view, changes in legal and market circumstances over time reduce the need to maintain orders to deter recidivism, and make continued existence of these orders burdensome and anti-competitive. Several commenters asserted that the enforcement options available to the Commission for deterring violations of law have expanded significantly over the years, making it unnecessary to rely on perpetual order restrictions. Finally, some commenters recommended automatically terminating consumer protection orders after ten years, while others recommended automatically terminating them after twenty years and applying a presumption for terminating these orders after ten years in response to a petition to reopen.

On the basis of the comments received and other considerations, the Commission has concluded that the existing policy regarding the duration of competition orders should be revised in three key respects. First, the new Policy Statement explicitly sets forth a circumstance in which future competition orders would endure more than twenty years. Whereas the existing policy states that core provisions in future orders ''ordinarily'' will sunset in twenty years, the new Policy Statement provides that core provision in future competition administrative orders will ordinarily sunset in twenty years, unless either 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(1) of the FTCA.[3]

Second, the new Policy Statement sets forth the Commission's intention to dispense with the petitioning process to sunset existing competition orders and instead sunset such orders through rulemaking. The rule, proposed elsewhere in the **Federal Register,** would automatically sunset each existing administrative order twenty years after it was issued, unless the Commission or the Department of Justice has filed a compliant (with or without an accompanying consent decree) in federal court to enforce such order pursuant to Section 5(1) of the FTCA during the twenty years preceding the adoption of the Policy Statement, or unless such a compliant is filed after the adoption of the Policy Statement and within twenty years after the order's issuance. Third, the new Policy Statement will not apply to Federal court orders.

The Commission's present policy regarding the duration of consumer

[1] Core provisions prohibit practices that would be unlawful whether used by parties subject to the order at issue or by other similarly situated persons or entities.

[2] Supplemental provisions are intended to prevent a respondent or defendant from repeating a law violation or to mitigate the effects of prior illegal conduct. Such provisions either prohibit or restrict conduct that would be lawful if engaged in by parties not subject to the order at issue or impose an affirmative obligation not otherwise required by law.

[3] The filing of such a complaint will not affect the duration of the order if the complaint is dismissed or the court rules that the respondent did not violate any provision of the order and the dismissal or ruling is either upheld on appeal or not appealed.

protection administrative orders and federal court orders is that core provisions and some type of supplemental provisions continue in effect indefinitely and that certain other types of supplemental provisions terminate after a specified period of time, usually five or ten years. On the basis of comments received and other considerations, the Commission has concluded that consumer protection administration orders, like competition administration orders, ordinarily fulfill their remedial purposes within twenty years. Accordingly, the Commission will presume that core provisions and supplemental provisions that would otherwise be perpetual in future consumer protection administrative orders should terminate (or ''sunset'') automatically within twenty years after the order's issuance, unless either the Commission or the Department of Justice has filed a compliant (with or without an accompanying consent decree) in federal court to enforce such order pursuant to Section 5(1) of the FTCA. This will not affect the current practice of terminating certain supplemental provisions earlier than twenty years (*e.g.*, provisions requiring distribution of the order). The Commission intends to implement its new policy with respect to existing orders through rulemaking. The Commission's new policy with respect to future administrative orders will be effective immediately.

However, the Commission has determined that it will not extend the policy of sunsetting consumer protection orders to federal court orders at this time. As discussed in the Policy Statement, many consumer protection federal court orders (*e.g.*, fraud orders entered under section 13(B) of the FTCA) pose significantly different considerations than either competition or consumer protection administrative orders. In addition, the Commission has significantly less experience on which to conclude that such orders serve their purpose after twenty years. For example, most section 13(b) fraud orders first originated in the 1980s.

Statement of Policy with Respect to Duration of Competition and Consumer Protection Orders

This statement describes the policies that the Commission has adopted with respect to the duration of competition and consumer protection administrative orders and federal court orders. This new Policy Statement supersedes the Policy Statement Regarding Duration of Competition Orders adopted on July 22, 1994.

Competition Administrative Orders

The injunctive provisions in competition administrative orders may proscribe future violations of statutory prohibitions—and secure adherence to statutory requirements—including the prohibition of unfair methods of competition embodied in section 5 of the FTCA, 15 U.S.C. 45, and the prohibitions and requirements embodied in sections 2, 3, 7, 7A, and 8 of the Clayton Act, 15 U.S.C. 13, 14, 18, 18a, and 19.[4]

As a matter of law, the remedial provisions of Commission orders must bear a reasonable relationship to the unlawful practices found to exist, and must be sufficiently clear and precise to be easily understood by the respondents or defendants.[5] Particular order provisions may prohibit both the specific illegal practices alleged in the associated complaint and ''like and related'' practices.[6]

Where such a provision has been included in an order, the Commission may prevail in a subsequent enforcement proceeding simply by establishing that the respondent or defendant did not comply with the terms of the provision, without having to also establish that the conduct prohibited by the provision is illegal, or that the conduct required is reasonably related to the prevention of illegal practices.

Future Orders

The Commission announced its current policy of sunsetting competition orders on September 1, 1994. 59 Fed. Reg. 45,286 (1994). Under that policy, core provisions of future competition orders are ordinarly sunsetted at twenty years, and supplemental provisions are sunsetted at up to 10 years.

After reviewing the comments and considering other available information, the Commission continues to believe that core provisions of competition administrative orders should ordinarily sunset after twenty years and that supplemental provisions should sunset after up to ten years.[7] None of the comments supplied information that the Commission had not already considered in choosing ordinarily to sunset core provisions in competition orders after twenty years and supplemental provisions after up to ten years. Therefore, the Commission is not changing the sunset periods for core or supplemental provisions in future competition orders.

However, the Commission has determined that the duration of future orders should be extended in instances where a complaint has been filed in federal court pursuant to section 5(1) of the FTCA, 15 U.S.C. 45(1), while the order remains in force, alleging a violation of such order. The twenty year sunset period will start anew on the date of the complaint is filed in federal court. However, the filing of such a complaint will not affect the duration of any supplemental order provision that terminates before twenty years. In addition, the filing of such a complaint will not affect the duration of the order's application to any respondent that is not named as a defendant in such complaint.[8] Furthermore, the filing of

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[4] Competition administrative orders may include types of relief that are not addressed in this statement because they have no further effect once the actions they require have been taken. For example, some orders require divestitures, revisions to bylaws, or publication of the administrative compliant and order.

[5] See, *e.g.*, *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 392–95 (1965); *FTC* v. *National Lead Co.*, 352 U.S. 419, 428–30 (1957); *FTC* v. *Ruberoid Co.*, 343 U.S. 470, 473 (1952); *FTC* v. *Cement Inst.*, 333 U.S. 683, 726 (1948); *Jacob Siegel Co.* v. *FTC*, 327 U.S. 608, 611–13 (1946).

[6] See *FTC* v. *Mandel Bros., Inc.*, 359 U.S. 385, 393 (1959); *Consumers Products of America, Inc.* v. *FTC*, 400 F.2d 930 (3d Cir. 1968), *cert. denied*, 393 U.S. 1088 (1969); *Nirsk Indus.* v. *FTC.*, 278 F.2d 337, 343 (7th Cir.), *cert denied*, 364 U.S. 883 (1960). For example, in *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 395 (1965), the Supreme Court reviewed a Commission order that prohibited a particular advertising practice not only for the product at issue in the case, but also for any other product. The Court sustained the scope of the order provision, stating that

> [t]he Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. Having been caught violating the Act, respondents 'must expect some fencing in.'

Id. at 395, quoting *FTC* v. *National Lead Co.*, 352 U.S. at 431, and *FTC* v. *Ruberoid Co.*, 343 U.S. at 473.

[7] Only in an exceptional case will the Commission adopt a sunset period longer or shorter than twenty years for core provisions. The Commission does not intend to change, in general, the expirtation periods of particular types of supplemental provisions that, as a matter of policy, have been set to expire by their own terms after periods of up to ten years.

[8] To implement this policy, new Commission administrative orders will include a provision similar to the following:

> This order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompaning consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:
>
> A. Any paragraph in this order that terminates in less than twenty years;
>
> B. This order's application to any respondent that is not named as a defendant in such complaint; and
>
> C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.
>
> *Provided further,* that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not

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such complaint will not affect the duration of the order if the complaint is dismissed or if a court rules that the defendant did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal.

The filing of a complaint (with or without an accompanying consent decree) under section 5(1) of the FTCA indicates that the Commission had reason to believe the order was violated. This finding undermines the ordinary presumption that there is no need for further order coverage with respect to that respondent beyond twenty years.[9]

Existing Orders

Under existing policy, respondents under competition administrative orders twenty years old may have their orders sunsetted through the order modification process, absent recidivist conduct or extraordinary circumstances.[10] Many commenters recommended that the Commission modify its policy with respect to the duration of existing administrative orders that have remained in force for twenty or more years. They recommended that the Commission terminate such orders automatically without engaging in a case-by-case review of each order through the petitioning process.

The Commission has concluded that these recommendations have merit. The new Policy defines in bright-line fashion the principal circumstances in which extended order coverage is required (the filing of an order enforcement action). The cost of the Commission retraining 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.

The new Policy Statement sets forth the Commission's intention to dispense with the petitioning process to sunset existing competition orders and instead sunset such orders through rulemaking. The proposed rule, published elsewhere in the **Federal Register**, would automatically sunset each existing administrative order twenty years after it was issued, 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(1) of the FTCA during the twenty years preceding the adoption of the Policy Statement, or unless such a complaint is filed after the adoption of the Policy Statement and within twenty years after the order's issuance. Under the proposed rule, existing orders that do not terminate twenty years after they are issued due to the filing of a section 5(1) complaint would terminate twenty years after the filing of the most recent complaint to enforce the order. However, the filing of such a complaint would not affect the order's duration unless the order is in force on the date the complaint is filed.[11] In addition, the filing of such a complaint will not affect the duration of the order's application to any respondent that is not named as a defendant in the complaint. The filing of such a complaint will only extent the duration of those order provisions not set to expire by their own terms. For example, a reporting requirement in an existing order that terminates ten years after the order's issuance will not be extended by the filing of such a complaint, even if the section 5(1) complaint is filed within that first ten years after the order's issuance. In addition, the filing of such a complaint will not affect the duration of the order if the complaint is dismissed or the court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal.

The Commission intends to implement this policy with respect to existing administrative orders through rulemaking rather than through adjudication.[12] The proposed rulemaking contemplates that respondents will receive notice through the rulemaking process and will not receive individual notice that their orders have been terminated. Until this rulemaking is completed, the Commission will leave in place its current policy regarding the duration of existing competition administrative orders.

Consumer protection administrative orders

Like competition orders, consumer protection orders perform several functions. First, they may proscribe future violations of statutory prohibitions—and secure adherence to statutory requirements—including the prohibition of unfair and deceptive acts or practices embodied in Section 5 of the FTCA, and the prohibitions and requirements embodied in other statutes intended to protect consumers, such as the Fair Credit Reporting Act, 15 U.S.C. 1681, the Truth-in-Lending Act, 15

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appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date 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.

A five year statute of limitations applies to civil penalty actions filed in federal court pursuant to section 5(1) of the FTCA. *See* 28 U.S.C. 2462. Therefore, it is conceivable that the government could file a complaint up to five years after an order has terminated challenging violations that occurred while the order was in force. Under the Policy Statement, the filing of a complaint after the order has terminated will not affect the duration of the order.

[9] The Commission retains the discretion to change the duration of an order pursuant to 16 CFR 2.51 or 3.72. 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. Nothing in this Policy Statement will affect the Commission's standards for reopening and modifying or vacating orders pursuant to 15 U.S.C. 45(b) or 16 CFR 2.51.

[10] The Commission states as follows in its 1994 Policy Statement regarding the duration of competition orders:

If, however, public comments, the Commission's experience enforcing the order, an ongoing antitrust investigation of the petitioner or the industry in which the petitioner competes at the Commission or the Department of Justice, or other readily available information raised substantial concerns about whether the public interest warrants retaining the order, *such further review will be conducted as necessary* to determine whether the public interest is best served by setting aside the order, modifying it, or retaining it as written. The Commission anticipates that, *absent extraordinary circumstances*, the basis for rebutting the presumption will be information that the petitioner has engaged in recidivist conduct.

Id. at 45,286–87 (emphasis added).

[11] As discussed in fn. 8, *supra*, a five year statute of limitations applies to civil penalty actions filed under section 5(1) of the FTCA.

[12] The Commission has the discretion to regulate parties through issuance of a rule of general applicability as opposed to adjudication of individual cases. *SEC* v. *Chenery Corp.*, 332 U.S. 194 (1947); *Heckler* v. *Ringer*, 446 U.S. 602, 617, (1984); *Nat'l Small Shipments Traffic Conf., Inc.* v. *ICC*, 725 F. 2d 1442, 1447 (D.C. Cir. 1984). This is so even if the rule may effectively limit or terminate rights or obligations in a specific case. *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 205 (1956). An agency may properly rely upon rulemaking to resolve certain classes of issues that the agency might otherwise adjudicate on an individual basis. *Heckler* v. *Campbell*, 461 U.S. 458, 467 (1982). As the court explained:

[E]ven where an agency's enabling statute expressly requires it to hold a hearing, the agency may rely on its rulemaking authority to determine issues that do not require case-by-case consideration. * * * A contrary holding would require the agency continually to relitigate in a single rulemaking proceeding.

Id. Under the Policy Statement, the Commission does not propose to exercise any discretion regarding the termination of existing orders. To apply the proposed criteria for terminating existing orders to any particular order, one need only ascertain a few facts, all of which are easily ascertained and present no issues of fact requiring case-by-case examination.

U.S.C. 1601–1667, and the Wool Products Labeling Act, 15 U.S.C. 68. Second, orders may require those subject to them to keep records, distribute the order, or file reports with the Commission to facilitate Commission efforts to monitor or enforce compliance with the order.

Under the Commission's existing practice, Commission order provisions that prohibit or require particular types of conduct to prevent ''unfair or deceptive acts or practices'' have different durations depending on their type. Core provisions prohibit practices that would be unlawful whether engaged in by parties subject to the order at issue or by other similarly situated persons or entities. Under current policy, core provisions in consumer protection orders typically continue in force indefinitely, and a respondent bears the burden of establishing (in the context of a petition to reopen) that such a provision should be modified or set aside.

All other provisions in consumer protection orders may be categorized as supplemental provisions,[13] which are intended to prevent a respondent or defendant from repeating a law violation or to mitigate the effects of prior illegal conduct. Under existing policy, some supplemental provisions in consumer protection orders terminate automatically after different prescribed periods. For example, some advertising disclosure, order distribution, and reporting requirements expire in five or ten years.

Future Orders

The Commission has concluded that there also is reason to sunset consumer protection orders. As commenters noted, many older orders contain supplemental relief that could become over-regulatory over time or impose requirements that the Commission would not adopt under current practice. There also are costs to perpetual core provisions in consumer protection orders. Basic prohibitions against misrepresenting or failing to have substantiation still require interpretation and may induce some companies to be more cautious than their competitions within the range of permissible advertising practices. Over time, changes in management or corporate culture may no longer warrant this extra caution and result in competitive imbalances.[14]

At the same time, it can be argued that consumer protection orders should remain in effect for a longer period than competition orders. A principal rationale for sunsetting competition orders was that even the core relief in such orders may become outdated or inhibit pro-competitive conduct if, due to changes in market conditions, the prohibited conduct no longer unreasonably restrains competition.[15] A number of commenters noted that consumer protection orders, by contrast, contain core prohibitions that remain valid regardless of marketing conditions (*e.g.*, ''cease misrepresenting'').[16] Although supplemental relief in consumer protection orders may share some attributes of supplemental relief in competition order,[17] it often does not share the added problem of the related core relief becoming invalid due to changed market conditions.

Thus, the Commission reasonably also could have decided that the core and supplemental relief in consumer protection orders should remain in effect longer than that in competition orders (*e.g.*, thirty years for core and twenty years for supplemental). However, the distinctions between supplemental and core provisions in consumer protection orders are not always clearly delineated, suggesting the need for a uniform sunset period. For example, a provision may bar a deceptive claim as deceptive, unless the claim is followed by a disclosure. It could be argued that such ''triggering'' provisions have both a core relief component to them (barring a claim as deceptive) and a supplemental relief aspect to them (requiring a disclosure if the claim is made). There may be disagreements over whether to characterize such disclosures as supplemental or core relief if the policy were to distinguish between the two, leading to anomalous results.

This resulting ambiguity regarding the characterization of particular provisions in consumer protection orders could undermine the clarity of Commission orders, raising respondents' cost of compliance and negotiating settlements and Commission costs in ensuring the enforceability of its orders. By contrast, as a general matter, competition orders differentiate between core and fencing-in and supplemental relief. Consequently, the Commission has determined that it is appropriate to differentiate between consumer protection and competition orders in this respect by ordinarily sunsetting both core and supplemental relief in consumer protection administrative orders after twenty years.[18]

Existing Orders

The Commission has determined that the new policy for terminating existing competition administrative orders described above will also apply to consumer protection administrative orders.[19]

Competition and Consumer Protection Federal Court Orders

This new policy shall not apply to either competition or consumer protection federal court orders. The Commission has determined not to do so for several reasons. Many consumer protection federal court orders obtained since the early 1980s pursuant to Section 13(b) of the FTCA address particularly egregious conduct such as hard core fraud. Given that none of these orders have been in force for twenty years, the Commission lacks sufficient information to determine whether their remedial purposes will be served within twenty years.[20] Therefore, the Commission has determined, at least of now, not to sunset the core provisions

[13] The Commission may also impose or seek types of relief in administrative orders that are not addressed in this statement because they have no further effect once the actions they require have been taken. For example, some orders require the payment of redress to consumers, the payment of disgorgement to the United States Treasury, or the dissemination of corrective advertising for a limited time.

[14] Although it is true, as some comments point out, that respondents subject to orders containing over-regulatory provisions can petition the Commission to reopen and vacate such orders, the filing of petitions entails costs for both respondents and the Commission.

[15] This is not true of those competition orders based on *per se* violations, such as price-fixing. However, a much larger proportion of consumer protection orders are based on core concepts that remain valid despite changes in market conditions.

[16] *See comments of NAAG, AARP, and CSPI.*

[17] Supplemental relief in consumer protection orders tends to be more detailed in its prohibitions than core relief, and thus more potentially burdensome. However, that is equally true of supplemental relief in competition orders.

[18] Only in an exceptional case will the Commission adopt a sunset period longer or shorter than twenty years for core provisions The Commission does not intend to change, in general, the expiration periods of particular types of supplemental provisions that, as a matter of policy, have been set to expire by their own terms after periods of up to ten years such as: (1) Administrative boilerplate (*e.g.*, recordkeeping, order distribution, and reporting requirements); and (2) some types of disclosure requirements (*e.g.*, informercial disclosures that sunset after ten years; *See TV Inc.*, Docket No. C–3296 (1990)).

[19] The termination under the policy Statement of an order issued in connection with a determination by the Commission that the respondent had engaged in an unfair or deceptive practice would not affect the ability of the Commission to recover a civil penalty based on that determination pursuant to Section 5(m)(1)(B) of the FTCA, 15 U.S.C. 45(n)(1)(B).

[20] The Commission notes that it does not have the power to unilaterally sunset federal court orders. Every federal court order must be entered by federal court to become effective. In order to sunset an existing federal court order, one or more parties thereto would have to file a motion with the court seeking termination of the order.

and some supplemental provisions in these orders.

In addition, many consumer protection federal court orders simply prohibit violations of Commission trade regulation rules (*e.g.*, Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 CFR 436) or statutes otehr than the FTCA enforced by the Commission (*e.g.*, Equal Credit Opportunity Act, 15 U.S.C. 1691). The core provisions in such orders are presumptively valid beyond twenty years in that they require adherence to regulations and statutes that are already binding on the defendants as well as their competitors. Moreover, many of these order do not contain supplemental provisions other than those that, as a matter of Commission policy, normally terminate after up to ten years. Therefore, there is no compelling reason to sunset such orders.

Finally, most competition and some consumer protection federal court orders simply prohibit violations of Commission administrative orders. These federal court orders will cease to have any effect once the underlying administrative orders are terminated pursuant to this Policy Statement. Therefore, there is no compelling reason to sunset these federal court orders.

By direction of the Commission.

Issued: August 7, 1995

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga Concerning Revised Statement of Policy On Duration of Commission Orders

August 1995.

The Commission today has approved a revised statement issued in July, 1994, that applied only perspectively and did not apply to consumer protection orders. In 1994, when the Commission issued its statement, I wrote separately to say that the Commission should apply a sunset policy to all its administrative orders, both consumer protection and competition orders and existing and future orders. I also expressed the view that the Commission need not issue individual orders modifying or vacating existing orders but easily could accomplish the same goal through publication of an appropriate notice in the **Federla Register.** I am gratified that today's statement is fully consistent with myv laws of a year ago and now, I am pleased to join the Commission in its current decision.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Aid to Families With Dependent Children Program: Demonstration Projects Under Section 1115(a) of the Social Security Act

AGENCIES: Office of the Secretary; Administration for Children and Families (ACF), HHS.

ACTION: Public Notice.

SUMMARY: This public notice invites States to submit demonstration project applications under section 1115(a) of the Social Security Act to test welfare reform strategies in various areas. It further advises that the Department would commit to approving applications that comply with the demonstration components within 30 days of receipt.

FOR FURTHER INFORMATION CONTACT: Howard Rolston, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, 7th Floor, West Wing, Washington, DC 20447, (202) 401–9220.

SUPPLEMENTARY INFORMATION:

I. General

Under Section 1115, the Department of Health and Human Services (HHS) is given latitude, subject to the requirements of the Social Security Act, to consider and approve demonstration proposals that are likely to assist in promoting the objectives of titles IV–A and B and XIX of the Act. The Department believes that State experimentation provides valuable knowledge that will help lead to improvements in achieving the purposes of the Act. Since January 1993, HHS has approved 33 welfare reform demonstration projects testing a broad range of strategies designed to promote the objectives of title IV.

The Department has reviewed the provisions of these projects, as well as those of prior projects, data from completed and continuing projects, other literature evaluating the welfare system, and the welfare reform proposals being considered by Congress. Based on this review, and our commitment to transform the Aid to Families With Dependent Children system into one that provides maximum opportunities and incentives for families to achieve financial independence, we have identified five strategies for improving the efficacy of the welfare system in helping recipients become self-sufficient for which we believe additional experimentation would be especially useful. We have concluded that demonstrations testing these strategies are likely to provide important new information on ways to accomplish the objectives of the Social Security Act more effectively and efficiently. This information can guide the development of both national and state policy.

These strategies are: (1) Work requirements, including limited exemptions from such requirements; (2) time-limited assistance for those who can work; (3) improving payment of child support by requiring work for those owing support; (4) requirements for minor mothers to live at home and stay in school; and (5) public-private partnerships under which AFDC grants are diverted to private employers to develop jobs and training programs. These areas, and approvable demonstration project provisions, are discussed in detail in section II below.

To date, the Department has approved a number of demonstration projects including components using one or more of these strategies. We have reviewed comments submitted regarding each of these strategies. Our overall judgment is that testing additional demonstrations in each of these areas would likely promote financial security for dependent children within a stable family and, thus, further the objectives of the Social Security Act. (Specific rationales justifying demonstrations in each policy area are set out in section II.) Moreover, in view of every state's unique circumstances, the Department believes that it is critically important that each state be given the opportunity to test combination(s) of these strategies that are designed to address the needs of the recipients in that state.

Accordingly, we plan to approve within 30 days of receipt demonstration project applications that States submit which would implement, on a statewide or substate basis, any (or any combination) of the provisions discussed in section II. Further, because such projects may incorporate only the provisions already announced in this notice, which have been found by the Secretary to further the objectives of the Social Security Act, the Department will not apply its ''Federal Notice'' procedures generally applicable to demonstration projects. 59 Fed. Reg. 49250 (1994). Other policies and procedures stated in that notice remain applicable, including state public notice requirements, rigorous evaluation, and cost neutrality, except that the application and review process with