§ 1126.13 [Suspended in part]

4. In § 1126.13(e)(1), the words ''and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant'' are suspended.

5. In § 1126.13, paragraph (e)(2) is suspended.

6. In § 1126.13(e)(3), the sentence ''The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;'' is suspended.

Dated: August 1, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–19461 Filed 8–7–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL TRADE COMMISSION

16 CFR Part 234

Guides for the Mail Order Insurance Industry

AGENCY: Federal Trade Commission.

ACTION: Elimination of guides.

SUMMARY: The Guides for the Mail Order Insurance Industry were adopted in 1964 to prevent deception of purchasers of insurance and maintenance of fair competition by out-of-state mail order sellers of insurance. Since issuance of the Guides, state insurance laws have changed significantly. The states, through their licensing powers, now regulate out-of-state mail order sellers of insurance. Those regulations cover most, if not all, of the substantive areas addressed by the Guides. These facts appear to make the Guides unnecessary. Because of these changed circumstances, the Commission has determined that it is in the public interest to eliminate the Guides for the Mail Order Insurance Industry. The Commission further has determined that, because the reasons to revoke the Guides are ample and not in controversy, it is unnecessary to seek comment. This action is not to be understood as a statement that the principles announced in the Guides do not reflect the requirements of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard or Walter Gross, Division of Service Industry Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3291 or (202) 326–3319.

SUPPLEMENTARY INFORMATION: The Guides for the Mail Order Insurance Industry were issued on May 15, 1964.[1] Designed to prevent deception and the maintenance of fair competition in the out-of-state mail order insurance industry, the Guides prohibit several forms of potential misrepresentation in advertising concerning the benefits, conditions, terms, identity, and claims paid for any insurance policy; the identity, standing in the industry, or financial condition of the insurer, and the disparagement of competitors or competitors' policies, services, or business methods.

As a part of its periodic review of the regulatory and economic impact of the Commission's rules and guides, the Commission reviewed the current status of state laws regulating mail order insurance sellers to determine whether there was a need to retain or remove the Guides. That review indicates that state insurance laws have changed substantially since the Guides were adopted in 1964.

All states have enacted some version of the model Unfair Trade Practices Act for insurance (National Ass'n of Insurance Commissioners). Those laws cover most, if not all, of the substantive areas covered by the Guides. In addition, at least 49 states have adopted the Nonadmitted Insurance Act (1983) (National Ass'n of Insurance Commissioners), or similar legislation, which: (1) Provides that no insurer shall transact business in the state, whether by mail or otherwise, without first obtaining a license; and (2) authorizes the state regulatory authority to require compliance with all state insurance laws as a condition of licensing. If licensing requirements, including compliance with the state's Unfair Trade Practices Act, are not met, the state can suspend or revoke the license.

These changes in state insurance laws appear to make the Guides' provisions unnecessary. Accordingly, the Commission has determined that it is in the public interest to eliminate the Guides.

List of Subjects in 16 CFR Part 234

Advertising, Insurance, Postal Service, Trade practices.

[1] 29 FR 6381 (1964).

PART 234—[REMOVED]

The Commission, under authority of sections 5 (a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 234.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in 16 CFR Part 14, Matter No. P954215; Repeal of Mail Order Insurance Guides, Matter No. P954903; Repeal of Guides Re: Debt Collection, Matter No. P954809; and Free Film Guide Review, Matter No. P959101

In a flurry of deregulation, the Commission today repeals or substantially revises several Commission guides and other interpretive rules.[1] The Commission does so without seeking public comment. I have long supported the general goal of repealing or revising unnecessary, outdated, or unduly burdensome legislative and interpretive rules, and I agree that the repeal or revision of these particular guides and interpretive rules appears reasonable. Nevertheless, I cannot agree with the Commission's decision not to seek public comment before making these changes.

Although it is not required to do so under the Administrative Procedure Act, 5 U.S.C. 553(b)(A), the Commission traditionally has sought public comment before issuing, revising, or repealing its guides and other interpretive rules. More specifically, the Commission adopted a policy in 1992 of reviewing each of its guides at least once every ten years and issuing a request for public comment as part of this review. *See* FTC Operating Manual ch. 8.3.8. The Commission decided to seek public comment on issues such as:

(1) The economic impact of and continuing need for the guide; (2) changes that should be made in the guide to minimize any adverse economic effect; (3) any possible conflict between the guide and any federal, state, or local laws; and (4) the effect on the guide of technological, economic, or other industry changes, if any, since the guide was promulgated.

Id. The Commission has sought public comment and has posed these questions concerning a number of guides since adopting its procedures for regulatory review in 1992.[2]

Notwithstanding its long-standing, general practice of seeking public comment and its

[1] Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements, 16 C.F.R. Part 14; Guides for the Mail Order Insurance Industry, 16 C.F.R. Part 234; Guides Against Debt Collection Deception, 16 C.F.R. Part 237; and Guide Against Deceptive Use of the Word ''Free'' In Connection With the Sale of Photographic Film and Film Processing Services, 16 C.F.R. Part 242.

[2] *See, e.g.,* Request for Comments Concerning Guides for the Hosiery Industry, 59 FR 18004 (Apr. 15, 1994); Request for Comment Concerning Guides for the Feather and Down Products Industry, 59 FR 18006 (Apr. 15, 1994).

specific policy of seeking public comment as part of its regulatory review process, the Commission has chosen not to seek public comment before repealing or revising these guides and interpretive rules. Why not? Has the Commission changed its view about the potential value of public comment? Perhaps the Commission knows all the answers, but then again, perhaps not. Although reasonable arguments can be made for repeal or revision of these guides and interpretive rules, public comment still might prove to be beneficial.

In addition, the relatively short period of time that would be required for public comment should not be problematic. The Commission has not addressed any of these guides or interpretive rules in the last ten years. Indeed, it has not addressed some of them for thirty years or more. For example, the Commission apparently has not addressed the interpretive rule concerning the use of the word ''tile'' in designation of non-ceramic products since it was issued in 1950.[3] The continued existence of these guides and interpretive rules during a brief public comment period surely would cause no harm because they are not binding and because, arguably, they are obsolete. I seriously question the need to act so precipitously as to preclude the opportunity for public comment.[4]

In 1992, the Commission announced a careful, measured approach for reviewing its guides and interpretive rules, and public comment has been an important part of that process. Incorporating public comment into the review is appropriate and sensible. Although I have voted in favor of repealing or revising these guides and interpretive rules, I strongly would have preferred that the Commission seek public comment before doing so.

[FR Doc. 95–19541 Filed 8–7–95; 8:45 am]

BILLING CODE 6750–01–M

[3] 16 C.F.R. 14.2.

[4] Unfortunately, seeking public comment would not permit the Commission to count the repeal and revision of these guides and interpretive rules in its tally of completed actions in the Regulatory Reinvention Initiative Report that will be sent to the President on August 1, 1995, but perhaps that harm could be mitigated by reporting to the President that the Commission is seeking public comment concerning repeal or revision.

16 CFR Part 237

Guides Against Debt Collection Deception

AGENCY: Federal Trade Commission.

ACTION: Elimination of guides.

SUMMARY: Because the Commission's Guides Against Debt Collection Deception have been superseded by, and submitted in, the Fair Debt Collection Practices Act (FDCPA), the Commission has determined that it is in the public interest to eliminate them.

The Guides were adopted in 1967 to codify the results of many debt collection cases brought by the Commission against debt collectors and creditors under Section 5(a)(1) of the Federal Trade Commission Act (FTCA). Although the Guides covered creditors and the FDCPA generally does not, proceedings still may be brought against creditors under Section 5 of the FTCA for engaging in unfair or deceptive debt collection practices, many of which are addressed in the FDCPA. Thus, the Commission would expect creditors and other parties whose collection activities are not covered by the FDCPA to look to the FDCPA for guidance in this regard.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John F. LeFevre, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3209.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued its Guides Against Debt Collection Deception in 1967.[1] The Guides reflect principles enunciated in a number of prior debt collection cases brought by the Commission against debt collectors and creditors under Section 5 of the Federal Trade Commission Act.[2] Among other things, the Commission found that various misrepresentations made in connection with debt collection were Section 5 violations, including false claims that (1) Accounts had been referred to independent debt collection agencies and/or consumer reporting agencies; (2) debtors' credit ratings would be adversely affected if their debts remained unpaid; (3) legal action would be taken; (4) collection agencies had legal divisions; and (5) dunning letters were genuine legal documents, telegrams, or other ''official'' forms. The Guides served to inform the collection industry and the general public of the Commission's position on a number of ''deception'' issues in debt collection that were regarded as particularly pertinent at the time. However, they were never used as a basis for instituting formal action against a debt collector for violation of Section 5. On September 20, 1977, Congress enacted the FDCPA, which became effective on March 20, 1978. Since that time, all Commission debt collection cases against debt collectors have been based upon violations of the FDCPA.[3] Under the FDCPA, the Commission can obtain, not only an injunction and affirmative relief, but also a civil penalty, which is not obtainable under Section 5. The Guides have not been useful to the Commission's debt collection enforcement program since the enactment of the FDCPA.

II. Comparison of the Guides to the FDCPA

With few exceptions, the provisions of the FDCPA duplicate or expand upon the Guides, as demonstrated by the following comparisons.

A. Definitions [Section 237.0]

1. Industry Member [Section 237.0(a)]

The standards of conduct in the Guides are directed at ''industry members,'' which include all entities that collect debts or help others in collecting debts, including creditors and skip-tracers.[4]

The comparable provision in the FDCPA is the definition of the ''debt collector'' [Section 803(6)], which focuses mainly on the third-party debt collection industry. Generally, creditors are not included in the definition unless they (1) use a false name in their collection activities to convey the impression that third parties are involved in collecting debts or (2) sell deceptive forms. Congress also determined that a number of other entities should not be included within the scope of the definition, including government employees, non-profit organizations, mortgage servicers and other designated groups.

Although the coverage of the Guides is greater than coverage under the FDCPA, particularly with respect to creditors, it has been the Commission's experience in enforcing the FDCPA that creditors look not to the Guides but to

[1] 32 FR 15539 (Nov. 8, 1967), as amended at 33 FR 5661 (Apr. 12, 1968).

[2] Testimony before the Subcommittee on Consumer Affairs of the Senate Committee on Banking, Housing and Urban Affairs, on S. 918, a proposed Fair Debt Collection Practices Act, May 13, 1977. *See also Parents Magazine Enterprises, Inc.*, 68 F.T.C. 980 (1965); *State Credit Control Board*, 70 F.T.C. 1318 (1966).

[3] The Commission has also initiated a few debt collection cases against creditors as Section 5 matters, since the FDCPA generally does not cover creditors. *Aldens, Inc.*, 98 F.T.C. 790 (1981); *J.C. Penney Co., Inc.*, 109 F.T.C. 54 (1987); *American Family Publishers*, Docket No. 9240 (1991). If a creditor uses a deceptive third-party name or furnishes deceptive forms in collecting debts, however, it is covered by the FDCPA.

[4] ''Industry Member shall mean any person, firm, partnership, corporation, organization, association and any other legal entity engaged in the practice of collecting or attempting to collect any and all kinds of money debts for itself or others, or any person, firm, partnership, corporation, organization, association, or any other legal entity.''