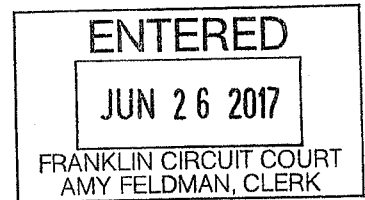


COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIV. II  
CIVIL ACTION NO. 17-CI-690



COMMONWEALTH OF KENTUCKY *ex rel.*  
ANDY BESHEAR, ATTORNEY GENERAL

PETITIONER

v. ASSURANCE OF VOLUNTARY COMPLIANCE

BRYANT HEATING AND COOLING CO., INC.

RESPONDENT

\*\*\* \*\*

This Assurance of Voluntary Compliance (“AVC”) is entered into between the Commonwealth of Kentucky, *ex rel.* Andy Beshear, Attorney General (the “Attorney General”), and Bryant Heating and Cooling Co., Inc. (“Bryant”), a Kentucky corporation, whose principal place of business is located at 4531 Bishop Lane, Louisville, Kentucky 40218, each being a Party and collectively, the Parties.

PARTIES AND JURISDICTION

1. Andy Beshear is the Attorney General of the Commonwealth of Kentucky and is responsible for the enforcement and administration of Kentucky law, including the Consumer Protection Act, KRS 367.110 *et seq.*, and is authorized pursuant to the Consumer Protection Act to accept this AVC pursuant to KRS 367.230.

2. Bryant Heating and Cooling Co., Inc. is a Kentucky corporation whose principal place of business is located at 4531 Bishop Lane, Louisville, Kentucky 40218.

3. The parties consent to the jurisdiction and venue of the Franklin Circuit Court pursuant to KRS 367.230.

## ALLEGATIONS

4. Beginning in early 2015, the Attorney General conducted an investigation of Bryant based in part upon consumer complaints received by the Attorney General and/or the Better Business Bureau during the previous three (3) year period.

5. Based upon this investigation the following conduct is alleged to have occurred (“Covered Conduct”):

- a. the use of sales tactics to sell or attempt to sell unnecessary goods and services to Kentucky consumers; and
- b. instances of non-compliance with the 3-day right of cancellation pursuant to 16 CFR 429, *et. seq.* and KRS 367.410 – 460; and
- c. the use of unlicensed employees to perform diagnostic, installation and repair services in Kentucky consumers’ homes; and
- d. failure to comply with pre- and post-work permitting laws.

6. KRS 367.170 provides “unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

7. KRS 367.230 states:

“In the administration of KRS 367.110 to 367.300, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act, or practice deemed to be violative of KRS 367.110 to 367.300 from any person who has engaged or was about to engage in that method, act, or practice. This assurance shall be in writing and shall be filed with and subject to the approval of the Circuit Court in which the alleged violator resides or has his principal place of business, or the Franklin Circuit Court. An assurance of voluntary compliance shall not be considered an admission of violation for any purpose. It shall be a willful violation of KRS 367.170 if a person who enters into an assurance of voluntary compliance fails to comply. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest, pursuant to KRS 367.190.”

8. KRS 367.990(2) provides, in part, that the Attorney General, upon petition to the court, may recover on behalf of the Commonwealth a civil penalty of not more than two thousand dollars (\$2,000.00) per willful violation of KRS 367.170 and not more than ten thousand dollars (\$10,000.00) per willful violation where the consumer is age sixty (60) or older and is substantially more vulnerable than other members of the public.

9. The Attorney General alleges that the above-referenced alleged actions by Bryant violated the Consumer Protection Act. Bryant denies all allegations stated herein.

### ASSURANCES AND AGREEMENTS

10. This AVC is a settlement of a disputed matter. It shall not be considered an admission of a violation for any purpose. Bryant and the Attorney General agree that no provision of the AVC operates as a penalty, forfeiture, or punishment under any provision of law. Neither the fact that the Parties entered into this AVC nor anything contained in this AVC is or implies an admission that Bryant has engaged in any trade practices prohibited by the Consumer Protection Act, KRS 367.110 et seq., or any other federal or state law, administrative rule or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Bryant expressly denies. Bryant does not admit any violation of the Consumer Protection Act and does not admit any wrongdoing that was or could have been alleged by the Attorney General under that law or any other federal or state law. Bryant is entering into this AVC solely for the purpose of settlement.

11. Bryant, directly or through any corporation, partnership, subsidiary, division, trade name, device, affiliate, or other entity, and its officers, employees, agents, successors, and assigns and all persons in active concert or participation, agrees as follows:

a. This AVC applies to all of Bryant's locations within or serving residents of the Commonwealth of Kentucky.

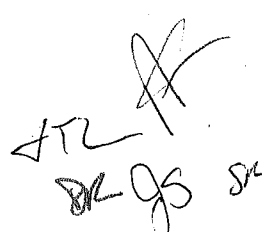
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b. The individuals signing this AVC on behalf of Bryant state that they are under no disability, have read and knowingly consent and agree to this AVC, and have authority to sign and enter into this AVC on behalf of Bryant. The signatories acknowledge that this AVC is binding on all of Bryant's officers and employees in their official capacity, successors, parent companies, subsidiaries or assigns.

c. This AVC applies to Bryant and to its future principals, officers and directors, assigns and successors, managerial or supervisory employees, and to any other employee or agent having responsibilities with respect to the subject matter of this AVC. Bryant agrees to notify its agents, employees, representatives, successors and assigns of the execution of this AVC and train them regarding the requirements thereof.

d. Bryant shall require all employees, including, but not limited to, installers and technicians to maintain licensure as required by the Commonwealth of Kentucky and shall maintain a list of license renewal dates of all employees requiring licensure, which shall be provided to the Attorney General upon request. All work requiring a license shall be performed only by or under the supervision or direction of personnel possessing the required licensure.

e. Within sixty (60) days of the date this agreement is executed, Bryant shall introduce a revised incentive compensation program for employees and independent contractors that does not disproportionately incentivize employees or independent contractors to sell more expensive equipment to potential customers. Furthermore, in each instance where a Bryant customer affirmatively decides to purchase new HVAC equipment in lieu of repair to existing equipment, Bryant employees or independent contractors shall document the basis for its recommendation and the customer's affirmative consent to said purchase. The Attorney General may request originals or copies of records reflecting payment to technicians and/or salespeople from time to time,



consistent with the terms of subsection (h) below. The Parties agree this information is considered to be proprietary and will be maintained in a confidential manner by the Office of the Attorney General.

f. Bryant shall establish, implement and adhere to reasonable written procedures for the handling and resolution of consumer complaints and shall provide a copy of this written procedure to the Attorney General within sixty (60) days of the execution of this AVC. The complaints and Bryant's response(s) thereto shall be provided to the Attorney General upon request.

g. With respect to consumer files and paperwork generated during sales and/or service transactions, Bryant shall maintain in paper or digital format for a minimum of three (3) years, the following:

i. each and every document presented to or signed by consumers when entering into an agreement with Bryant regarding sales and/or service of HVAC equipment, including, but not limited to, estimates, contracts, invoices, work orders and sales receipts; and

ii. all technician and installer notes regarding the sales and/or service of HVAC equipment, including, but not limited to, a clear and conspicuous diagnosis of the issue and a clear and conspicuous statement of Bryant's recommendation for resolving same, which diagnosis shall be provided to the consumer prior to any agreement. Bryant shall document the defect or damage requiring repair or replacement, including photographing said damage or defect in such a manner as to clearly indicate the damage, unless impracticable. Bryant shall retain such documentation in the customer's file.

iii. Digital audio recordings of all consumer initiated phone calls.

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h. Bryant shall permit the Attorney General or its representative, with a minimum of forty eight (48) hours' notice, and at the Attorney General's expense, to inspect and/or copy such consumer files and those documents and records listed in 10(g)(i), (ii) and (iii), above, during normal business hours at Bryant's principal place of business. Such inspection shall occur at the direction of the Attorney General, or its representative, no more than two (2) times per year, shall involve no more than twenty-five (25) files at any one time, and shall occur no longer than three (3) years after the execution of this AVC. Nothing in this paragraph shall prevent the Attorney General from investigating future consumer complaints, including requesting relevant files for review.

i. The parties acknowledge a disagreement concerning whether in home sales, in instances where the consumer has initiated contact with Bryant prior to Bryant's meeting the consumer at the consumer's house, are subject to any three day right of rescission or other cooling off period under either 16 CFR Part 429 or KRS Sec. 367. Notwithstanding the disagreement noted above, Bryant agrees to comply, and shall comply, with the Federal Trade Commission Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, 16 CFR Part 429, *et. seq.* and KRS 367.410 – 460. For purposes of this AVC, it shall be sufficient compliance for Bryant to (i) notify the consumer of the right to cancel; and (ii) provide the consumer with a copy of the Notice of Cancellation, pursuant to the directives in 16 CFR 429, *et. seq.*, attached hereto as Exhibit A. Provided, however, that in instances where the consumer has initiated the contact and specifically requested the seller visit the buyer's home for the purpose of repairing or performing maintenance to the consumer's HVAC equipment, 16 CFR 429.0(a)(5) shall apply and repairs and maintenance conducted in response to the consumer's specific request, and the installation of replacement parts necessarily used in performing the maintenance or in

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making the repairs, shall not be considered a door-to-door sale for which a three day right of rescission must be given. If, in the course of such a visit, Bryant sells the consumer additional goods or services other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services shall be considered a door-to-door sale for which a three day right of rescission shall be given. Bryant shall record consumer phone calls and shall make those phone calls available to the Attorney General in accordance with the provisions of paragraph 11(g) above.

j. In cases where Bryant determines, based on a technician's expert opinion, that a threat to safety exists, Bryant shall document the basis for this determination and provide to the consumer a writing signed by the technician indicating the specific threat to safety and the method used to diagnose same.

k. In instances where a consumer has a bona fide immediate personal emergency, as contemplated by 16 CFR 429.0(3), and elects to proceed with the immediate repair to HVAC equipment or the immediate replacement of an HVAC system, after Bryant has diagnosed the HVAC issue while at the consumer's residence, Bryant shall (i) inform the consumer of its three day right of rescission, both orally and in writing, pursuant to 16 CFR 429 *et. seq.* and (ii) obtain from the consumer a separate dated and signed personal statement in the consumer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days.

l. If, in instances involving a door to door sale Bryant elects to proceed with the immediate repair to HVAC equipment or the immediate replacement of an HVAC system without first obtaining a waiver from the consumer of his or her three day right to rescission, then Bryant shall, after Bryant has diagnosed the HVAC issue while at the consumer's residence, inform the

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consumer of the consumer's three day right of rescission, both orally and in writing, pursuant to 16 CFR 429 *et. seq.*, provided, however, that if the consumer subsequently exercises the consumer's three day right of rescission then Bryant shall be required to (i) leave its repairs or installed HVAC system in consumer's house and (ii) surrender any claim to (a) the repairs or installed HVAC system or (b) payment for the repairs, the installed HVAC system or the installation.

m. The Parties agree that compliance with 16 CFR 429, *et. seq.* is substantial compliance with KRS 367.410 – KRS 367.460.

n. Bryant shall train its managers, salespeople, technicians, and call center employees on the Rule, and the requirements of this AVC, and shall maintain a written acknowledgement from those who have received this training. The Attorney General shall be provided with a copy of all training materials upon request.

o. Within thirty (30) days of the Effective Date, Bryant shall revise its current form contracts and form invoices which apply to door to door sales, as more particularly described in paragraph 11(i) above, to clearly and conspicuously include, at a minimum, the following:

i. The FTC's Cooling-Off Period language required by 16 CFR 429, *et. seq.*, specifically:

1. in bold face type of a minimum size of 10 points, in immediate proximity to the space reserved in the contract for the signature of the buyer, a statement in substantially the following form:

a. **“You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right;”** and

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b. The make, model number, warranty information, warranty terms, warranty price, maintenance program price, tax, and any other amount Bryant charges to the consumer.

p. Bryant shall create a form or forms, pursuant to 16 CFR 429, *et. seq.*, subject to approval by the Attorney General, and which shall become addenda to this AVC, that shall (i) notify and inform consumers of their right to cancel the transaction; and (ii) include the Notice of Cancellation language found in 16 CFR 429.1. In all instances in which Bryant visits a consumer's home for a service or sales call, and prior to any sale, Bryant shall provide the consumer a written contract of the equipment and services being sold and have the consumer sign the contract before commencing work.

q. At the time of execution of the contract between Bryant and the consumer, Bryant shall provide to the consumer the following:

- ii. All applicable Bryant guarantees in writing;
- iii. A copy of any warranty Bryant included or sold that is in addition to the manufacturer's warranty that comes with the system;
- iv. A copy of the manufacturer's warranty, which shall be provided at the time of the installation if it is not available when the consumer signs the contract.

12. In further consideration for the settlement of this matter, Bryant agrees to the following terms:

a. Bryant shall, within twenty (20) days from the date this AVC is entered by Franklin Circuit Court, pay to the Attorney General the sum of **Six Hundred and Seventy-Five Thousand Dollars [\$675,000.00]** as partial consideration for the settlement of this matter, \$168,750 of which

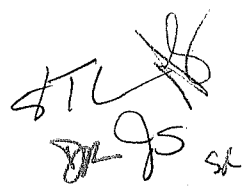
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shall be retained by the Office of the Attorney General pursuant to KRS 48.005 as the reasonable costs of litigation and the administration and monitoring costs of the consumer restitution program, and to assure Bryant's compliance with this AVC.

b. "**Bryant Warranty**" is defined as the additional warranty offered by Bryant on **Covered HVAC Equipment** that covers the cost of labor and ancillary parts as a supplement to the manufacturer's warranty. Depending on the type of equipment, the Bryant Warranty coverage is for one, five or ten years from the date of equipment installation, and shall be extended only to Bryant customers still in privity, either via residence or ownership, with the home in which the equipment was originally installed.

c. "**Covered Class of Consumers**" is defined as those Kentucky consumers who purchased **Covered HVAC Equipment** directly from Bryant between January 1, 2014, and the date of execution of this AVC and whose **Bryant Warranty** has not lapsed as of the date of execution. Upon the execution of this AVC, Bryant shall provide to the Attorney General an electronic and hard copy list of all consumers included within this Covered Class and the Attorney General shall notify consumers in writing of the entry and terms of this AVC, including the restitution available to consumers, using the template attached hereto as Exhibit B (the "Consumer Notice"). The Consumer Notice has been negotiated by the Parties and shall not be modified by any Party without the express written consent of the other. Bryant has represented, and the Attorney General has expressly relied upon this representation, that it estimates at least 4,000 consumers are included in the defined Class.

d. "**Covered HVAC Equipment**" is defined as furnaces, air conditioners, air handlers and heat pumps but expressly excludes boilers, geothermal units, mini-splits, package units and PTAC systems.



e. Bryant agrees to provide and shall provide to the **Covered Class of Consumers** who purchased **Covered HVAC Equipment** a one-year **Bryant Warranty** extension on all ancillary parts and labor. This extension shall commence upon termination of the original **Bryant Warranty**.

13. In the event that that Kentucky Attorney General is required to initiate legal action or incur any costs to compel Bryant to abide by the terms of this AVC, Bryant shall be liable, upon proof of the violation, to the Kentucky Attorney General for any costs associated with proving the violation, including, but not limited to, a reasonable attorneys' fee.

14. This AVC constitutes a full and complete settlement and release by the Office of the Attorney General, on behalf of the Commonwealth of Kentucky, of any and all claims and causes of action against Bryant and its successors, assigns, subsidiaries, predecessors, and all of their respective employees, officers, and managers arising out of or connected to the **Covered Conduct** which were or could have been asserted by the Attorney General under the Kentucky Consumer Protection Act or its common law authority, up to and including the Effective Date of this AVC, and the Attorney General covenants not to commence any proceeding of any kind with respect to the Covered Conduct hereby released.

15. The acceptance of this AVC by the Attorney General shall not be deemed approval by the Attorney General of any of Bryant's business practices. Further, neither Bryant nor anyone acting on its behalf shall state or imply that the Attorney General has approved, condoned or sanctioned any portion or aspect of Bryant's business operations.

16. If the Attorney General believes that Bryant has violated any obligation under this AVC, the Attorney General shall, prior to initiating any court proceeding, notify Bryant in writing of any alleged violation of the AVC and request that Bryant take action to correct the alleged

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violation. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of Kentucky consumers, Bryant shall have twenty (20) business days from the date of receipt of such written notice to respond to the Attorney General in writing by denying that a violation has occurred, or by accepting (without necessarily admitting) the allegation of violation and proposing steps that Bryant will take to cure the violation. If Bryant fails to respond within twenty (20) business days or denies that a violation has occurred, the Attorney General may seek appropriate legal remedy.

17. By entering into this AVC and paying the amount set forth herein, Bryant does not agree to or admit any liability, fault or wrongdoing. This AVC shall not be construed or used as a waiver or limitation of any defense otherwise available to Bryant in any action, or Bryant's right to defend itself from, or make any arguments in, any private individual, regulatory, government or class claims or suits relating to the subject matter or terms of this AVC. This AVC is made without trial or adjudication or any issue of fact or law or finding of liability of any kind. This AVC shall not create a private cause of action or confer any right upon any third party for violation of any federal or state statute.

18. This AVC sets forth the entire understanding between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this AVC that are not fully expressed herein or attached hereto.

19. Nothing in this AVC shall be construed to affect or deprive any right of action that any consumer, person, or entity may have, or any right of action that any local, state, federal or other governmental entity may hold, against Bryant except otherwise provided by law.

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## GENERAL PROVISIONS

20. This AVC is governed by the laws of the Commonwealth of Kentucky, and the Attorney General and Bryant agree that this AVC is subject to court approval and the parties hereby agree to seek court approval of this AVC.

21. Bryant represents and warrants that it is represented by legal counsel and has been fully advised of its legal rights in this matter.

22. This AVC contains the entire agreement between Bryant and the Attorney General and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this AVC which are not fully expressed herein.

23. The titles and headers to each section of this AVC are for convenience purposes only and are not intended by the parties to lend meaning to the actual terms of this AVC.

24. Nothing in this AVC shall limit the Plaintiff's right to obtain information, records, or testimony from Bryant for the purpose of determining compliance with this AVC. Bryant agrees to execute and deliver all documents and instruments which are necessary to carry out the terms of this AVC.

25. If any clause, provision or section of this AVC shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this AVC, and this AVC shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or provision had not been contained herein.

26. Nothing in this AVC shall be construed as relieving Bryant of its obligation to comply with all state and federal laws and regulations, and no term of this AVC shall be deemed to grant Bryant permission to engage in any acts or practices prohibited by such laws and regulations.

27. Any failure by a party to this AVC to insist upon performance by any other party of any of the provisions of this AVC shall not be deemed a waiver of any of the provisions of this AVC, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any provisions of this AVC and the imposition of any applicable sanctions and penalties, including but not limited to, contempt, civil penalties, and payment of costs and attorney fees.

28. Time shall be of the essence with respect to each provision of this AVC that requires action to be taken by a party within a stated time period or upon a specified date.

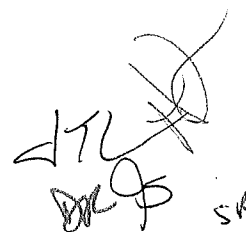
29. Bryant agrees that this AVC does not entitle Bryant to seek or to obtain attorney's fees as a prevailing party under any statute, regulation or rule and Bryant waives any rights to attorney's fees, costs or monies of any kind that may arise under any such statute, regulation or rule. No costs or discretionary costs shall be taxed to the Petitioner.

30. This AVC shall be binding and effective as of the date of its entry by the Clerk.

31. Bryant waives service of process and any notice for the filing, approval, and entry of this AVC.


APPROVED THIS THE 26<sup>th</sup> DAY OF June 2017

  
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JUDGE, FRANKLIN CIRCUIT COURT  
HAVE SEEN AND AGREED TO APPROVAL AND ENTRY


  
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ANDY BESHEAR, ATTORNEY GENERAL

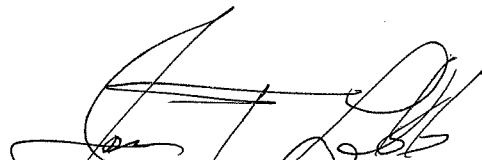
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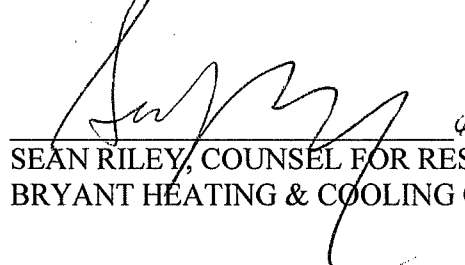
  
\_\_\_\_\_  
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andy.downey@ky.gov

BRYANT HEATING & COOLING CO. INC.

  
\_\_\_\_\_  
ANTHONY SCHEMBARI, SR., OWNER AND PRESIDENT

  
\_\_\_\_\_  
JACKIE SCHEMBARI, OWNER

  
\_\_\_\_\_  
JAMES LOBB, COUNSEL FOR RESPONDENT  
BRYANT HEATING & COOLING CO., INC

  
\_\_\_\_\_  
SEAN RILEY, COUNSEL FOR RESPONDENT  
BRYANT HEATING & COOLING CO., INC

**PART 429—RULE CONCERNING COOLING-OFF PERIOD FOR SALES MADE AT HOMES OR AT CERTAIN OTHER LOCATIONS**

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**§429.0 Definitions.**

For the purposes of this part the following definitions shall apply:

(a) *Door-to-Door Sale*—A sale, lease, or rental of consumer goods or services in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller (e.g., sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges), and which has a purchase price of \$25 or more if the sale is made at the buyer's residence or a purchase price of \$130 or more if the sale is made at locations other than the buyer's residence, whether under single or multiple contracts. The term *door-to-door sale* does not include a transaction:

(1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto; or

(3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days; or

(4) Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or

(5) In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If, in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(6) Pertaining to the sale or rental of real property, to the sale of insurance, or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.

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(b) *Consumer Goods or Services*—Goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

(c) *Seller*—Any person, partnership, corporation, or association engaged in the door-to-door sale of consumer goods or services.

(d) *Place of Business*—The main or permanent branch office or local address of a seller.

(e) *Purchase Price*—The total price paid or to be paid for the consumer goods or services, including all interest and service charges.

(f) *Business Day*—Any calendar day except Sunday or any federal holiday (e.g., New Year's Day, Presidents' Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.)

#### **§429.1 The Rule.**

In connection with any door-to-door sale, it constitutes an unfair and deceptive act or practice for any seller to:

(a) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

“You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

The seller may select the method of providing the buyer with the duplicate notice of cancellation form set forth in paragraph (b) of this section, *provided however*, that in the event of cancellation the buyer must be able to retain a complete copy of the contract or receipt. Furthermore, if both forms are not attached to the contract or receipt, the seller is required to alter the last sentence in the statement above to conform to the actual location of the forms.

(b) Fail to furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned either “NOTICE OF RIGHT TO CANCEL” or “NOTICE OF CANCELLATION,” which shall (where applicable) contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract.

Handwritten initials and a signature in the bottom right corner of the page.

NOTICE OF CANCELLATION

[enter date of transaction]

(Date)

You may CANCEL this transaction, without any Penalty or Obligation, within THREE BUSINESS DAYS from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within TEN BUSINESS DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice, or send a telegram, to [*Name of seller*], at [*address of seller's place of business*] NOT LATER THAN MIDNIGHT OF [*date*].

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

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(c) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(d) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically the buyer's right to cancel the sale in accordance with the provisions of this section.

(e) Fail to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.

(f) Misrepresent in any manner the buyer's right to cancel.

(g) Fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to: (i) Refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(h) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(i) Fail, within 10 business days of receipt of the buyer's notice of cancellation, to notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

#### **§429.2 Effect on State laws and municipal ordinances.**

(a) The Commission is cognizant of the significant burden imposed upon door-to-door sellers by the various and often inconsistent State laws that provide the buyer the right to cancel a door-to-door sales transaction. However, it does not believe that this constitutes sufficient justification for preempting all of the provisions of such laws and the ordinances of the political subdivisions of the various States. The rulemaking record in this proceeding supports the view that the joint and coordinated efforts of both the Commission and State and local officials are required to insure that consumers who have purchased from a door-to-door seller something they do not want, do not need, or cannot afford, be accorded a unilateral right to rescind, without penalty, their agreements to purchase those goods or services.

(b) This part will not be construed to annul, or exempt any seller from complying with, the laws of any State or the ordinances of a political subdivision thereof that regulate door-to-door sales, except to the extent that such laws or ordinances, if they permit door-to-door selling, are directly inconsistent with the provisions of this part. Such laws or ordinances which do not accord the buyer, with respect to the particular transaction, a right to cancel a door-to-door sale that is substantially the same or greater than that provided in this part, which permit the

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imposition of any fee or penalty on the buyer for the exercise of such right, or which do not provide for giving the buyer a notice of the right to cancel the transaction in substantially the same form and manner provided for in this part, are among those which will be considered directly inconsistent.

**§429.3 Exemptions.**

(a) The requirements of this part do not apply for sellers of automobiles, vans, trucks or other motor vehicles sold at auctions, tent sales or other temporary places of business, provided that the seller is a seller of vehicles with a permanent place of business.

(b) The requirements of this part do not apply for sellers of arts or crafts sold at fairs or similar places.

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