

institutions provide annual notices regarding their data sharing practices. The Notice will follow up on comments that the Bureau has previously received suggesting that eliminating the requirement to provide such notices in certain situations—for instance perhaps where financial institutions do not share information with third parties or have not changed their practices since provision of the last annual notice—would significantly reduce compliance burden for industry and unwanted paperwork for consumers.

Additional Analysis, Planning, and Prioritization

The Bureau is continuing to assess timelines for the issuance of additional Dodd-Frank Act related rulemakings and rulemakings inherited by the CFPB from other agencies as part of the transfer of authorities under the Dodd-Frank Act. The Bureau is also continuing to conduct outreach and research to assess issues in various other markets for consumer financial products and services. For example, as directed by Congress, the Bureau is conducting a study on the use of agreements providing for arbitration of consumer disputes in connection with the offering or providing of consumer financial products or services. Upon completion of this study, the Bureau will evaluate possible policy responses, including possible rulemaking actions consistent with the findings of the study. The Bureau will similarly evaluate policy responses to other ongoing research and outreach, taking into account the critical need for and effectiveness of various policy tools. The Bureau will update its regulatory agenda in spring 2014 to reflect the results of further analysis, planning, and prioritization.

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CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Statement of Regulatory Priorities

The U.S. Consumer Product Safety Commission (the Commission) is charged with protecting the public from unreasonable risks of death and injury associated with consumer products. To achieve this goal, the Commission:

- Develops mandatory product safety standards or bans when other, less restrictive, efforts are inadequate to address an unreasonable risk of injury, or where required by statute;
- obtains repair, replacement, or refund of the purchase price for defective products that present a substantial product hazard;

- develops information and education campaigns about the safety of consumer products;

- participates in the development or revision of voluntary product safety standards; and

- follows congressional mandates to enact specific regulations.

Unless directed otherwise by congressional mandate, when deciding which of these approaches to take in any specific case, the Commission gathers and analyzes the best available data about the nature and extent of the risk presented by the product. The Commission's rules require the Commission to consider, among other factors, the following criteria when deciding the level of priority for any particular project:

- Frequency and severity of injury;
- causality of injury;
- chronic illness and future injuries;
- costs and benefits of Commission action;
- unforeseen nature of the risk;
- vulnerability of the population at risk; and
- probability of exposure to the hazard.

Significant Regulatory Actions:

Currently, the Commission is considering one rule that would constitute a "significant regulatory action" under the definition of that term in Executive Order 12866:

1. Flammability Standard for Upholstered Furniture

Under section 4 of the Flammable Fabrics Act (FFA), the Commission may issue a flammability standard or other regulation for a product of interior furnishing if the Commission determines that such a standard is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury or significant property damage. The Commission's regulatory proceeding could result in several actions, one of which could be the development of a mandatory standard requiring that upholstered furniture meet mandatory labeling requirements, resist ignition, or meet other performance criteria under test conditions specified in the standard.

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FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory and Deregulatory Priorities

I. Regulatory and Deregulatory Priorities

Background

The Federal Trade Commission ("FTC" or "Commission") is an independent agency charged by its enabling statute, the Federal Trade Commission Act, with protecting American consumers from "unfair methods of competition" and "unfair or deceptive acts or practices" in the marketplace. The Commission strives to ensure that consumers benefit from a vigorously competitive marketplace. The Commission's work is rooted in a belief that competition, based on truthful and non-misleading information about products and services, provides consumers the best choice of products and services at the lowest prices.

The Commission pursues its goal of promoting competition in the marketplace through two different, but complementary, approaches. Unfair or deceptive acts or practices injure both consumers and honest competitors alike and undermine competitive markets. Through its consumer protection activities, the Commission seeks to ensure that consumers receive accurate, truthful, and non-misleading information in the marketplace. At the same time, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from anticompetitive business practices. Thus, the second part of the Commission's basic mission—antitrust enforcement—is to prohibit anticompetitive mergers or other anticompetitive business practices without unduly interfering with the legitimate activities of businesses. These two complementary missions make the Commission unique insofar as it is the Nation's only Federal agency to be given this combination of statutory authority to protect consumers.

The Commission is, first and foremost, a law enforcement agency. It pursues its mandate primarily through case-by-case enforcement of the Federal Trade Commission Act and other statutes. In addition, the Commission is also charged with the responsibility of issuing and enforcing regulations under a number of statutes. Pursuant to the FTC Act, the Commission currently has in place 16 trade regulation rules. Other examples include the regulations enforced pursuant to credit and

financial statutes¹ and to energy laws.² The Commission also has adopted a number of voluntary industry guides. Most of the regulations and guides pertain to consumer protection matters and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions.

Commission Initiatives

The Commission protects consumers through a variety of tools, including both regulatory and non-regulatory approaches. It has encouraged industry self-regulation, developed a corporate leniency policy for certain rule violations, and established compliance partnerships where appropriate.

As detailed below, protecting consumer privacy, containing the rising costs of health care and prescription drugs, fostering competition and innovation in cutting-edge, high-tech industries, challenging deceptive advertising and marketing, and safeguarding the interests of potentially vulnerable consumers, such as children and the financially distressed, continue to be at the forefront of the Commission's consumer protection and competition programs. By subject area, the FTC discusses some of the major workshops, reports,³ and initiatives it has pursued since the 2012 Regulatory Plan was published.

(a) *Protecting Consumer Privacy.* As the nation's top cop on the consumer privacy beat, the FTC's goals are to protect consumer privacy in an evolving market for consumer information, make sure companies keep their privacy promises to consumers, and ensure that consumers have confidence to take advantage of the benefits that a dynamic and ever-changing marketplace offer. The FTC achieves those goals through law enforcement, consumer education, and policy initiatives. For example, recent law enforcement activities include a settlement with Cbr, Inc., which resolved charges that its data security failures compromised credit card and other sensitive consumer

health information.⁴ Settlements with DesignerWare, LLC, and seven rent-to-own companies resolved charges that they monitored the personal activity of people who rented computers and allegedly tricked them into revealing personal information, without their knowledge or consent.⁵

The Commission hosted several workshops seeking to protect consumer privacy; including Mobile Security—Potential Threats and Solutions (June 4, 2013) and The Big Picture: Comprehensive Online Data Collection (December 6, 2012). The Mobile Security forum explored potential challenges that may arise as consumer use of mobile technology continues to grow. For example, there were a range of views of the impact of malware on the current mobile security environment. The U.S. market is taking steps to try to secure the mobile environment, but it is important to stay vigilant.

On December 6, 2012, the FTC also hosted a workshop exploring the practices and privacy implications of comprehensive data collection about consumers' online activities. Entities such as Internet Service Providers (ISPs), operating systems, browsers, social media, and mobile carriers have the capability to collect data about computer users across the Internet, beyond direct interactions between consumers and these entities. The comprehensive data collection workshop follows up on the FTC's March 2012 report, *Protecting Consumer Privacy in an Era of Rapid Change*,⁶ which called on companies handling consumer data to implement recommendations for protecting consumers' privacy, including privacy by design, providing simplified privacy choices to consumers, and greater transparency to consumers about data collection and use.

(b) *Protecting Children.* Children increasingly use the Internet for entertainment, information and schoolwork. The Children's Online Privacy Protection Act (COPPA) and the FTC's COPPA Rule protect children's privacy when they are online by putting their parents in charge of who gets to collect personal information about their preteen kids. The FTC enforces COPPA by ensuring that parents have the tools

they need to protect their children's privacy. The Commission amended its COPPA Rule to broaden and clarify the Rule's notice and consent requirements in light of fast-paced technological changes since the rule was issued. See *Final Actions* below for more information about this completed rulemaking.

On December 12, 2012, the Commission issued a new staff report, "Mobile Apps for Kids: Disclosures Still Not Making the Grade," examining the privacy disclosures and practices of apps offered for children in the Google Play and Apple App stores.⁷ The report details the results of the FTC's second survey of kids' mobile apps. Since FTC staff's first survey of kids' mobile apps in 2011, staff found little progress toward giving parents the information they need to determine what data is being collected from their children, how it is being shared, or who will have access to it. The report also finds that many of the apps surveyed included interactive features, such as connecting to social media, and sent information from the mobile device to ad networks, analytics companies, or other third parties, without disclosing these practices to parents. See item (g) *Food Marketing to Children* for more activities directed at the protection of children.

(c) *Protecting Seniors.* On May 7, 2013, the FTC hosted a workshop on *Senior Identity Theft: A Problem in This Day and Age* that brought together experts from government, private industry, and public interest groups to discuss the unique challenges facing victims of senior identity theft. The forum included panels on different types of senior identity theft—tax and government benefits, medical, and long-term care—and explored the best consumer education and outreach techniques for reaching seniors.

On February 20–21, 2013, FTC representatives and the Florida Attorney General's Office held a town hall event in Boca Raton, Florida to address the rising incidence of identity theft-related tax fraud in South Florida. State and federal law enforcement partners and consumer advocacy groups, including the U.S. Attorney's Office, Internal Revenue Service, U.S. Postal Inspection Service, Seniors vs. Fraud, and AARP, also participated in the program to discuss the problem and address ways to combat identity theft tax fraud. In addition, on the same dates, the Federal Trade Commission also joined a program on ID Theft and Tax Fraud in

¹ For example, the Fair Credit Reporting Act (15 U.S.C. sections 1681 to 1681(u), as amended) and the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, codified in relevant part at 15 U.S.C. sections 6801 to 6809 and sections 6821 to 6827, as amended).

² For example, the Energy Policy Act of 1992 (106 Stat. 2776, codified in scattered sections of the U.S. Code, particularly 42 U.S.C. section 6201 et seq. and the Energy Independence and Security Act of 2007 (EISA)).

³ The FTC also prepares a number of annual and periodic reports on the statutes it administers. These are not discussed in this plan.

⁴ See press release "Cord Blood Bank Settles FTC Charges that it Failed to Protect Consumers' Sensitive Personal Information" dated January 28, 2013, at <http://ftc.gov/opa/2013/01/cbr.shtm>.

⁵ See press release "FTC Halts Computer Spying" dated September 25, 2012, at <http://www.ftc.gov/opa/2012/09/designerware.shtm>.

⁶ See March 2012 privacy report at <http://ftc.gov/os/2012/03/120326privacyreport.pdf>.

⁷ See December 2012 report at <http://www.ftc.gov/os/2012/12/121210mobilekidsappreport.pdf>.

Pembroke Pines and Sunny Isles, Florida.

(d) *Protecting Financially Distressed Consumers.* Even as the economy recovers, some consumers continue to face financial challenges. The FTC takes effective actions to ensure that consumers are protected from deceptive and unfair credit practices and get the information they need to make informed financial choices. For example, the FTC has continued its efforts to ensure that consumers get the information they need to understand the terms of their mortgages. After reviewing hundreds of mortgage ads, the FTC alerted real estate agents, home builders, and lead generators through warning letters⁸ that their mortgage ads may be deceptive and that they needed to review them to ensure compliance with “truth in advertising” laws.

The Commission has also continued its efforts to curb deceptive and unfair practices in debt collection. In addition to bringing law enforcement actions against debt collectors that violated the Fair Debt Collection Practices Act and the Federal Trade Commission Act, the FTC issued a report on its Debt Buyer Study and co-hosted a roundtable on debt collection issues with the Consumer Financial Protection Bureau (“CFPB”). The study is the first empirical examination of companies in the business of buying consumer debts and trying to collect on them.⁹ In recent years, debt buyers have become a significant part of the debt collection system. The study evaluated the types of information debt buyers received from creditors both at and after the time of purchase, as well as the contracts governing the relationship between debt buyers and creditors. The report, titled *The Structure and Practices of the Debt Buying Industry*, found that while debt buying plays an important role in consumer credit, it also raises significant consumer protection concerns. For example, consumers each year disputed an estimated one million or more debts that debt buyers attempted to collect, but debt buyers verified only about half of the disputed debts. The report also found that (1) creditors imposed limitations on the ability of debt buyers to obtain information and documents about accounts after sale, and (2) most

contracts between creditors and debt buyers stated that the creditors generally disclaimed all warranties and representations that the information they provided to buyers about debts was accurate.

The joint FTC–CFPB roundtable held in June 2013 examined the flow of consumer data throughout the debt collection process. The event brought together consumer advocates, credit issuers, collection industry members, state and federal regulators, and academics to exchange information on a range of issues, including: the amount of documentation and other information currently available to different types of collectors and at different points in the debt collection process; the information needed to verify and substantiate debts; the costs and benefits of providing consumers with additional disclosures about their debts and debt-related rights; and information issues relating to pleading and judgment in debt collection litigation.

(e) *Promoting Competition in Health Care.* The FTC continues to work to restrict anticompetitive settlements featuring payments by branded drug firms to a generic competitor to keep generic drugs off the market (so called, “pay for delay” agreements). It’s a practice where the pharmaceutical industry wins, but consumers lose. The brand company protects its drug franchise and the generic competitor makes more money from the sweetheart deal than if it had entered the market and competed. The Commission will pursue federal court challenges to invalidate individual agreements when anticompetitive. On June 17, 2013, the U.S. Supreme Court held that pay-for-delay agreements between brand and generic drug companies are subject to antitrust scrutiny by holding that lower courts should apply an antitrust “rule of reason” analysis when evaluating such agreements. *FTC v. Actavis, Inc.*, 570 U.S. 756 (2013). The Court stopped short of declaring reverse-payment arrangements presumptively illegal.

(f) *Fostering Innovation & Competition.* For more than two decades, the Commission has examined difficult issues at the intersection of antitrust and intellectual property law—issues related to innovation, standard-setting, and patents. The Commission’s work in this area is grounded in the recognition that intellectual property and competition laws share the fundamental goals of promoting innovation and consumer welfare. The Commission has authored several seminal reports on competition and patent law, and conducted workshops to

learn more about emerging practices and trends.

For instance, the FTC and DOJ held a joint workshop in December 2012 to explore the impact of patent assertion entity (PAE) activities¹⁰ and encouraged efforts of the Patent Trade Office to provide the public with more complete information regarding patent ownership.¹¹ The FTC and DOJ also received public comments in conjunction with the workshop. While workshop panelists and commenters identified potential harms and efficiencies of PAE activity, they noted a lack of empirical data in this area, and recommended that FTC use its authority under Section 6(b) of the Federal Trade Commission Act. Responding to these requests, and recognizing its own role in competition policy and advocacy, the Commission announced on September 27, 2013, that it is seeking public comments on a proposal to gather information from approximately 25 companies that are in the business of buying and asserting patents. The FTC intends to use this information to examine how PAEs do business and develop a better understanding of how they impact innovation and competition. After considering the public comments, the FTC will submit a request to the Office of Management and Budget (OMB) in compliance with Paperwork Reduction Act, seeking clearance of the FTC’s proposal to issue compulsory process orders seeking information from the PAEs.

(g) *Food Marketing to Children.* On December 21, 2012, the FTC also issued a follow-up study of food and beverage industry marketing expenditures and activities directed to children and teens to gauge progress since the launch of self-regulatory efforts to promote healthier food choices to kids. The study found that industry self-regulation resulted in modest nutritional improvements from 2006 to 2009 within specific food categories heavily marketed to kids.¹² The study also

¹⁰ See press release “Federal Trade Commission, Department of Justice to Hold Workshop on Patent Assertion Entity Activities” dated November 19, 2012, at <http://www.ftc.gov/opa/2012/11/paeworkshop.shtm>.

¹¹ See Comments of the Antitrust Division of the United States Department of Justice and the United States Federal Trade Commission, February 1, 2013, Before the United States Department of Commerce Patent and Trademark Office, In the Matter of Notice of Roundtable on Proposed Requirements for Recordation of Real-Party-in-Interest Information Throughout Application Pendency and Patent Term, Docket No. PTO–P–2012–0047, at <http://www.ftc.gov/os/2013/02/130201pto-rpi-comment.pdf>.

¹² See press release “FTC Releases Follow-Up Study Detailing Promotional Activities,

⁸ See press release “FTC Warns Mortgage Advertisers that Their Ads May Violate Federal Law” dated November 19, 2012, at <http://www.ftc.gov/opa/2012/11/mortgageadvertise.shtm>.

⁹ See press release “The First of Its Kind, FTC Study Shines a Light on the Debt Buying Industry, Finds Consumers Would Benefit from Use of Better Data in Debt Collection” dated January 30, 2013, at <http://www.ftc.gov/opa/2013/01/debtbuyer.shtm>.

found that overall spending on marketing to youth was down 19.5 percent from 2006, while spending on marketing in new media (such as online, mobile, and viral marketing) increased by 50 percent.

(h) *Alcohol Advertising*. On February 1, 2012, the Office of Management and Budget (OMB) gave the Commission approval, under the Paperwork Reduction Act, to issue compulsory process orders to up to 14 alcohol companies. On April 16, 2012, the Commission issued the orders, seeking information on company brands, sales, and marketing expenses; compliance with advertising placement codes; and use of social media and other digital marketing.¹³ The Commission staff estimates that the study will be completed, and a report issued, in fall 2013. The Commission also continues to promote the "We Don't Serve Teens" consumer education program, supporting the legal drinking age.¹⁴

(i) *Gasoline Prices*. Given the impact of energy prices on consumer budgets, the energy sector continues to be a major focus of FTC law enforcement and study. In November 2009, the FTC's Petroleum Market Manipulation Rule became final.¹⁵ Our staff continues to examine all communications from the public about potential violations of this Rule, which prohibits manipulation in wholesale markets for crude oil, gasoline, and petroleum distillates. Other activities complement these efforts, including merger enforcement and an agreement with the Commodity Futures Trading Commission to share investigative information.

(j) *Fraud Surveys*. The FTC's Bureau of Economics (BE) continues to conduct fraud surveys and related research on consumer susceptibility to fraud. For example, the Commission conducted an exploratory experimental study in a university economics laboratory to see whether we could identify characteristics of consumers who might be more likely to fall victim to fraud. The results of that study are still being

analyzed. The most recent consumer fraud survey was conducted between late November 2011 and early February 2012, and a report describing the findings was released in April 2013. Currently, BE is seeking OMB approval to conduct a second exploratory study on consumer susceptibility to fraudulent and deceptive marketing practices. The results of these efforts may aid the FTC to better target its enforcement actions and consumer education initiatives, and improve future fraud surveys.

(k) *Protecting Consumers from Cross-Border Harm*. The FTC continues to protect American consumers from fraud by making greater use of the tools provided by the U.S. SAFE WEB Act. Recognizing the continuing challenge of cross-border fraud and the FTC's ongoing efforts to combat it, Congress recently reauthorized the US SAFE WEB Act. The Act, which enables the agency both to share information with foreign law enforcement agencies and to obtain information on their behalf, is vital to strengthening the culture of mutual assistance that enables law enforcers to achieve greater results working together than they could alone. One example of this cooperation is the six cases the FTC filed this year against mostly foreign-based operators of a massive tech support scam.¹⁶ The FTC used its US SAFE WEB Act tools to work with law enforcers in Australia, Canada and the U.K., among other countries who provided invaluable assistance to the FTC. Australia and Canada also brought administrative actions for violations of their Do Not Call laws.

The FTC strives to promote sound approaches to common problems by building relationships with sister agencies around the world. The FTC and DOJ entered into a Memorandum of Understanding with the Indian competition authorities, providing for increased cooperation and mechanisms to further strengthen relations among the agencies. The FTC's network of formal and informal arrangements enables it to cooperate in merger and conduct cases such as Vivendi/EMI¹⁷ and Google.¹⁸

The FTC continues to lead efforts to promote convergence toward sound and effective antitrust enforcement internationally. The FTC co-leads the International Competition Network's Agency Effectiveness Working Group and its Investigative Process Project, which has focused on transparency in competition investigations. The FTC also leads the Curriculum Project, which produced new video training modules on the analysis of competitive effects, leniency programs, merger analysis, and predatory pricing.

(l) *Self-Regulatory and Compliance Initiatives with Industry*. The Commission continues to engage industry in compliance partnerships in the funeral and franchise industries. Specifically, the Commission's Funeral Rule Offender Program, conducted in partnership with the National Funeral Directors Association, is designed to educate funeral home operators found in violation of the requirements of the Funeral Rule, 16 CFR 453, so that they can meet the rule's disclosure requirements. More than 425 funeral homes have participated in the program since its inception in 1996. In addition, the Commission established the Franchise Rule Alternative Law Enforcement Program in partnership with the International Franchise Association (IFA), a nonprofit organization that represents both franchisors and franchisees. This program is designed to assist franchisors found to have a minor or technical violation of the Franchise Rule, 16 CFR 436, in complying with the rule. Violations involving fraud or other section 5 violations are not candidates for referral to the program. The IFA teaches the franchisor how to comply with the rule and monitors its business for a period of years. Where appropriate, the program offers franchisees the opportunity to mediate claims arising from the law violations. Since December 1998, 21 companies have agreed to participate in the program.

Rulemakings and Studies Required by Statute

Congress has enacted laws requiring the Commission to undertake rulemakings and studies. This section discusses required rules and studies. The final actions section below describes actions taken on the required rulemakings and studies since the 2012 Regulatory Plan was published.

FACTA Rules. The Commission has issued all of the rules required by FACTA (Fair and Accurate Credit Transactions Act). These rules are codified in several parts of 16 CFR 602 *et seq.*, amending or supplementing

Expenditures, and Nutritional Profiles of Food Marketed to Children and Adolescents" dated December 21, 2012, at <http://www.ftc.gov/opa/2012/12/foodmarketing.shtm>.

¹³ A copy of the order, a list of the target companies, and the press release are available online at <http://www.ftc.gov/opa/2012/04/alcoholstudy.shtm>.

¹⁴ More information can be found at <http://www.dontserveteens.gov/>.

¹⁵ 16 C.F.R. Part 317; See press release: "New FTC Rule Prohibits Petroleum Market Manipulation" (Aug. 6, 2009), available at <http://www.ftc.gov/opa/2009/08/mmr.shtm>; "FTC Issues Compliance Guide for Its Petroleum Market Manipulation Regulations," News Release (Nov. 13, 2009), available at <http://www.ftc.gov/opa/2009/11/mmr.shtm>.

¹⁶ See press release "FTC Halts Massive Tech Support Scams" dated October 3, 2012, at <http://ftc.gov/opa/2012/10/pecon.shtm>.

¹⁷ See press release "FTC Closes Its Investigation Into Vivendi, S.A.'s Proposed Acquisition of EMI Recorded Music" dated September 21, 2012, at <http://www.ftc.gov/opa/2012/09/emi.shtm>.

¹⁸ See press release "Google Agrees to Change Its Business Practices to Resolve FTC Competition Concerns In the Markets for Devices Like Smart Phones, Games and Tablets, and in Online Search" dated January 1, 2013, at <http://www.ftc.gov/opa/2013/01/google.shtm>.

regulations relating to the Fair Credit Reporting Act. See *Final Actions* below for information about the recent revision of the Identity Theft Rule, 16 CFR 681.

FACTA Studies. On March 27, 2009, the Commission issued compulsory information requests to the nine largest private providers of homeowner insurance in the nation. The purpose was to help the FTC collect data for its study on the effects of credit-based scores in the homeowner insurance market, a study mandated by section 215 of the FACTA. During the summer of 2009, these nine insurers submitted responses to the Commission's requests. FTC staff has reviewed the large policy-level data files included in these submissions and has identified a sample set of data to be used for the study. The insurance companies then worked with their vendor to ensure the security of delivering the data set to the FTC's own and separate vendor. That data has now been sent to the FTC's vendor; upon completion of its work, some of the data will be sent to the FTC and some will be sent to the Social Security Administration to obtain additional information before returning the data to the FTC. Staff expects to prepare and submit the report to Congress in late Spring 2014. This study is not affected by the Consumer Financial Protection Act.

Section 319 of FACTA requires the FTC to study the accuracy and completeness of information in consumers' credit reports and to consider methods for improving the accuracy and completeness of such information. Section 319 of the Act also requires the Commission to issue a series of biennial reports to Congress over a period of 11 years. The Commission's December 2012 report to Congress on credit reporting accuracy focused on identifying potential errors that could have a material effect on a person's credit standing. Any participant who identified a potentially material error on their report was encouraged to dispute the erroneous information. The study found that 26 percent of consumers reported a potential material error on one or more of their three reports and filed a dispute with at least one credit reporting agency (CRA) and half of these consumers experienced a change in their credit score. For five percent of consumers, the error on their credit report could lead to them paying more for products such as auto loans and insurance. Congress instructed the FTC to complete this study by December 2014, when a final report is due.

Fur Rules. The Fur Products Labeling Act (Fur Act) requires covered furs and

fur products to be labeled, invoiced, and advertised to show: (1) the name(s) of the animal that produced the fur(s); (2) where such is the case, that the fur is used fur or contains used fur; (3) where such is the case, that the fur is bleached, dyed, or otherwise artificially colored; and (4) the name of the country of origin of any imported furs used in the fur product. The implementing Fur Act rules (Fur Rules) are set forth at 16 CFR 301. In December 2010, Congress passed the Truth in Fur Labeling Act (the TFLA), which amends the Fur Act, by: (1) eliminating the Commission's discretion to exempt fur products of "relatively small quantity or value" from disclosure requirements; and (2) providing that the Fur Act will not apply to certain fur products "obtained . . . through trapping or hunting" and sold in "face to face transaction[s]." Public Law No. 111-113. The TFLA also directs the Commission to review and allow comment on the Fur Products Name Guide, 16 CFR 301.0 (Name Guide).

On September 17, 2012, the Commission published a proposed amendment to the Fur Rules to update its Fur Products Name Guide, provide more labeling flexibility, incorporate recently enacted TFLA provisions, and eliminate unnecessary requirements. The comment period closed on November 16, 2012. See 77 FR 57043. On June 19, 2013, the Commission issued a supplemental NPRM seeking public comment on proposed changes to the guaranty provisions of the Fur Rules. See 78 FR 36693. These changes would align the Fur Rules with proposed changes to the guaranty provisions of the Rules under the Textile Fiber Products Identification Act. The comment period closed on July 23, 2013. Staff anticipates sending a recommendation to the Commission by the end of 2013.

Retrospective Review of Existing Regulations

In 1992, the Commission implemented a program to review its rules and guides regularly. The Commission's review program is patterned after provisions in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Under the Commission's program, rules are reviewed on a 10-year schedule. For many rules, this has resulted in more frequent reviews than is generally required by section 610 of the Regulatory Flexibility Act. This program is also broader than the review contemplated under the Regulatory Flexibility Act, in that it provides the Commission with an ongoing systematic approach for seeking information about

the costs and benefits of its rules and guides and whether there are changes that could minimize any adverse economic effects, not just a "significant economic impact upon a substantial number of small entities." 5 U.S.C. 610.

As part of its continuing 10-year review plan, the Commission examines the effect of rules and guides on small businesses and on the marketplace in general. These reviews may lead to the revision or rescission of rules and guides to ensure that the Commission's consumer protection and competition goals are achieved efficiently and at the least cost to business. In a number of instances, the Commission has determined that existing rules and guides were no longer necessary nor in the public interest. Most of the matters currently under review pertain to consumer protection and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions. Pursuant to this program, the Commission has rescinded 37 rules and guides promulgated under the FTC's general authority and updated dozens of others since the early 1990s.

In light of Executive Orders 13563 and 13579, the FTC continues to take a fresh look at its longstanding regulatory review process. The Commission is taking a number of steps to ease burdens on business and promote transparency in its regulatory review program:

- The Commission recently issued a revised 10-year review schedule (see next paragraph below) and is accelerating the review of a number of rules and guides in response to recent changes in technology and the marketplace. The Commission is currently reviewing 22 of the 65 rules and guides within its jurisdiction.
- The Commission continues to request and review public comments on the effectiveness of its regulatory review program and suggestions for its improvement.
- The FTC maintains a Web page at <http://www.ftc.gov/regreview> that serves as a one-stop shop for the public to obtain information and provide comments on individual rules and guides under review as well as the Commission's regulatory review program generally.

In addition, the Commission's 10-year periodic review schedule includes initiating reviews for the following rules and guides (78 FR 30798, May 23, 2013) during 2013 and 2014:

- (1) Telemarketing Sales Rule, 16 CFR 310,
- (2) Regulations Under Section 4 of the Fair Packaging and Labeling Act, 16 CFR 500,

(3) Exemptions From Requirements and Prohibitions under Part 500, 16 CFR 501,

(4) Regulations Under Section 5(c) of the Fair Packaging and Labeling Act, 16 CFR Part 502,

(5) Statements of General Policy or Interpretation [under the Fair Packaging and Labeling Act], 16 CFR 503.

(6) Rules and Regulations under the Hobby Protection Act, 16 CFR 304,

(7) Standards for Safeguarding Customer Information, 16 CFR 314, and

(8) Preservation of Consumers' Claims and Defenses [Holder in Due Course Rule], 16 CFR 433.

Furthermore, consistent with the goal of reducing unnecessary burdens under section 6 of Executive Order 13563, the Commission amended:

- The Energy Labeling Rule, 16 CFR 305, to streamline Department of Energy and FTC reporting requirements for Regional Efficiency Standards; and
- The Alternative Fuel Rule, 16 CFR 309, by harmonizing FTC and Environmental Protection Agency fuel economy labeling requirements for alternative fuel vehicles.

In particular, the Alternative Fuel Rule amendments are estimated to save industry approximately 35,000 hours in compliance time¹⁹ by consolidating the labels required on alternative fuel vehicles (AFVs) with those required by the U.S. Environmental Protection Agency (EPA), and eliminating the need for two different labels. Please see the relevant sections under *Final Actions* below for further information on both rulemakings.

Ongoing Rule and Guide Reviews

The Commission is continuing review of a number of rules and guides, which are discussed below.

(a) Rules

Premerger Notification Rules and Report Form, 16 CFR 801–803. On August 20, 2012, the Commission, in conjunction with the DOJ's Antitrust Division, announced it was seeking public comments on proposed changes to the premerger notification rules that could require companies in the pharmaceutical industry to report proposed acquisitions of exclusive patent rights to the FTC and the DOJ for antitrust review. 77 FR 50057 (Aug. 20, 2012). The proposed rulemaking clarifies when a transfer of exclusive rights to a patent in the pharmaceutical industry results in a potentially reportable asset acquisition under the Hart Scott Rodino (HSR) Act. The comment period expired on October 25,

2012, with three comments received. Staff estimates the final rule will be issued by the fourth quarter of 2013.²⁰

Negative Option Rule, 16 CFR 425. The Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers ship merchandise automatically to their subscribers and bill them for the merchandise within a prescribed time. The rule protects consumers by requiring the disclosure of the terms of membership clearly and conspicuously and establishes procedures for administering the subscription plans. An ANPRM was published on May 14, 2009, 74 FR 22720, and the comment period closed on July 27, 2009. On August 7, 2009, the Commission reopened and extended the comment period until October 13, 2009. 74 FR 40121. Staff reviewed the comments and anticipates Commission action by the end of 2013.

*Telemarketing Sales Rule (TSR), 16 CFR 308. TSR/Caller ID—*The Commission issued an advance notice of proposed rulemaking on December 15, 2010, requesting public comment on provisions of the Telemarketing Sales Rule concerning caller identification services and disclosure of the identity of the seller or telemarketer responsible for telemarketing calls. See 75 FR 78179. The comment period closed on January 28, 2011. Staff anticipates further Commission action by the end of 2013.

*TSR/Anti-Fraud Provisions—*Commission staff are considering proposed "Anti-Fraud" amendments to the TSR concerning, among other things, the misuse of novel payment methods by telemarketers and sellers. On May 21, 2013, the Commission issued a Notice of Proposed Rulemaking (NPRM), which was published in the *Federal Register* on July 9, 2013. See 78 FR 41200. After a short extension, the comment period closed on August 8, 2013. Commission staff is reviewing the comments submitted in response to the NPRM, and anticipates making a recommendation to the Commission in early 2014.

Mail or Telephone Order Merchandise Rule. The Mail Order Rule, 16 CFR 435, requires that, when sellers advertise merchandise, they must have a reasonable basis for stating or implying that they can ship within a certain time. On September 30, 2011, the Commission published a NPRM proposing to: clarify that the Rule covers all orders placed over the Internet; revise the Rule to allow sellers to provide refunds and refund notices by

any means at least as fast and reliable as first class mail; clarify sellers' obligations when buyers use payment systems not enumerated in the Rule; and require that refunds be made within seven working days for purchases made using third-party credit cards. See 76 FR 60765. The comment period closed on December 14, 2011. On April 29, 2013, the Commission announced the availability of the Staff Report on the Rule and solicited comment for a period of 75 days. The comment period closed on July 15, 2013. Staff anticipates sending a recommendation to the Commission by the fall of 2013.

Care Labeling Rule, 16 CFR 423. Promulgated in 1971, the Rule on Care Labeling of Textile Apparel and Certain Piece Goods as Amended (the Care Labeling Rule) makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching care labels stating "what regular care is needed for the ordinary use of the product." The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions, and allows the use of approved care symbols in lieu of words to disclose care instructions. After reviewing the comments from a periodic rule review (76 FR 41148; July 13, 2011), the Commission concluded on September 20, 2012, that the Rule continued to benefit consumers and would be retained, and sought comments on potential updates to the Rule, including changes that would: Allow garment manufacturers and marketers to include instructions for professional wetcleaning on labels; permit the use of ASTM Standard D5489–07, "Standard Guide for Care Symbols for Care Instructions on Textile Products," or ISO 3758:2005(E), "Textiles—Care labeling code using symbols," in lieu of terms; clarify what can constitute a reasonable basis for care instructions; and update the definition of "dryclean." See 77 FR 58338. On July 24, 2003, the Commission announced that it will host a public roundtable on October 1, 2013, to analyze proposed changes to the Rule. See 78 FR 45901. Staff anticipates further Commission action by April 2014.

Textile Labeling Rules, 16 CFR 303. The Textile Fiber Products Identification Act (Textile Act) requires wearing apparel and other covered household textile articles to be marked with (1) the generic names and percentages by weight of the constituent fibers present in the textile fiber product; (2) the name under which the manufacturer or another responsible

¹⁹ See 78 FR 23832, 23834.

²⁰ See *Final Actions* for information about a separate final rule proceeding for HSR Rules.

USA company does business, or in lieu thereof, the registered identification number (RN) of such a company; and (3) the name of the country where the textile product was processed or manufactured. The implementing rules are set forth at 16 CFR 303 (Rules and Regulations Under the Textile Fiber Identification Act or Textile Labeling Rules).

On November 7, 2011, as part of its systematic review of all current Commission regulations and guides, the Commission requested comments on the Rule. See 76 FR 68690. The comment period closed on January 4, 2012. The Commission issued an NPRM on May 20, 2013, proposing changes designed to clarify and update the Rules, and make them more flexible, giving businesses more compliance options without imposing significant new obligations. See 78 FR 29263. The FTC also sought comment on the costs and benefits of the proposed changes. The comment period closed on July 8, 2013. Staff is reviewing comments and anticipates further Commission action by early 2014.

Used Car Rule, 16 CFR 455. The Used Motor Vehicle Trade Regulation Rule ("Used Car Rule"), 16 CFR 455, sets out the general duties of a used vehicle dealer; requires that a completed Buyers Guide be posted at all times on the side window of each used car a dealer offers for sale; and mandates disclosure of whether the vehicle is covered by a dealer warranty and, if so, the type and duration of the warranty coverage, or whether the vehicle is being sold "as is-no warranty." The Commission published a notice seeking public comments on the effectiveness and impact of the rule. See 73 FR 42285 (July 21, 2008). The comment period, as extended and then reopened, ended on June 15, 2009. In response to comments, the Commission published a Notice of Proposed Rulemaking on December 17, 2012 (See 77 FR 74746) and a final rule revising the Spanish translation of the window form on December 12, 2012. See 77 FR 73912. The extended comment period on the NPRM ended on March 13, 2012. Staff anticipates the next Commission action by the end of 2013.

Wool Rules, 16 CFR 300. The Wool Products Labeling Act of 1939 (Wool Act) requires covered wool products to be marked with (1) the generic names and percentages by weight of the constituent fibers present in the wool product; (2) the name under which the manufacturer or another responsible USA company does business, or in lieu thereof, the registered identification number (RN) of such a company; and (3)

the name of the country where the wool product was processed or manufactured. The implementing rules and regulations are set forth at 16 CFR 300 (Rules and Regulations Under The Wool Products Labeling Act of 1939 or Wool Rules). On January 30, 2012, as part of its systematic review of all current Commission regulations and guides, the Commission requested comments on the Rule. See 77 FR 4498. On September 16, 2013, the Commission announced it was issuing an NPRM proposing changes designed to clarify and update the Rules, to make them more flexible, and to align them with the Commission's proposed amendments to the Textile Rules. See 78 FR 57808. The proposed changes include incorporating the Wool Act's new definitions for cashmere and very fine wools, clarifying descriptions of products containing virgin or new wool, and revising the Rules to allow certain hang-tags disclosing fiber trademarks and performance even if they do not disclose the product's full fiber content. The comment period closes on November 25, 2013.

Consumer Warranty Rules, 16 CFR 701-703. The Rule Governing the Disclosure of Written Consumer Product Warranty Terms and Conditions (Rule 701) establishes requirements for warrantors for disclosing the terms and conditions of written warranties on consumer products actually costing the consumer more than \$15.00. The Rule Governing the Pre-Sale Availability of Written Warranty Terms, 16 CFR part 702 (Rule 702) requires sellers and warrantors to make the terms of a written warranty available to the consumer prior to sale. The Rule Governing Informal Dispute Settlement Procedures (IDSM) (Rule 703) establishes minimum requirements for those informal dispute settlement mechanisms that are incorporated by the warrantor into its consumer product warranty. By incorporating the IDSM into the warranty, the warrantor requires the consumer to use the IDSM before pursuing any legal remedies in court. On August 23, 2011, as part of its ongoing systematic review of all FTC rules and guides, the Commission requested comments on, among other things, the economic impact and benefits of these Rules, Guides, and Interpretations²¹; possible conflict between the Rules, Guides, and Interpretations and state, local, or other federal laws or regulations; and the

²¹ The Federal Register Notice also announced the review of the related Guides for the Advertising of Warranties and Guarantees, 16 CFR 239, and the Interpretations of Magnuson-Moss Warranty Act, 16 CFR 700.

effect on the Rules, Guides, and Interpretations of any technological, economic, or other industry changes. See 76 FR 52596. The comment period closed on October 24, 2011. Staff anticipates sending a recommendation to the Commission by December 2013.

Cooling-Off Rule. The Cooling-Off Rule requires that a consumer be given a 3-day right to cancel certain sales greater than \$25.00 that occur at a place other than a seller's place of business. The rule also requires a seller to notify buyers orally of the right to cancel, to provide buyers with a dated receipt or copy of the contract containing the name and address of the seller and notice of cancellation rights, and to provide buyers with forms which buyers may use to cancel the contract. As part of its systematic regulatory review process, and following public comment, the Commission announced that it was retaining the Cooling Off Rule and proposed increasing its \$25 exclusionary limit to \$130 to account for inflation. 78 FR 3855 (Jan. 17, 2013). The comment period closed on March 4, 2013. Staff reviewed the comments and the Commission is currently reviewing their recommendation.

Unavailability Rule. The Unavailability Rule, 16 CFR 424, states that it is a violation of section 5 of the FTC Act for retail stores of food, groceries, or other merchandise to advertise products for sale at a stated price if those stores do not have the advertised products in stock and readily available to customers during the effective period of the advertisement, unless the advertisement clearly discloses that supplies of the advertised products are limited or are available only at some outlets. This Rule is intended to benefit consumers by ensuring that advertised items are available, that advertising-induced purchasing trips are not fruitless, and that store prices accurately reflect the prices appearing in the ads. On August 12, 2011, the Commission announced an ANPRM and a request for comment on the Rule as part of its systematic periodic review of current rules. The comment period closed on October 19, 2011. Staff has reviewed the comments and expects to submit a recommendation to the Commission by the end of 2013.

(b) Guides

Vocational Schools Guides, 16 CFR 254. The Commission sought public comments on its Private Vocational and Distance Education Schools Guides, commonly known as the Vocational Schools Guides. 74 FR 37973 (July 30, 2009). Issued in 1972 and most recently

amended in 1998 to add a provision addressing misrepresentations related to post-graduation employment, the guides advise businesses offering vocational training courses—either on the school's premises or through distance education, such as correspondence courses or the Internet—how to avoid unfair and deceptive practices in the advertising, marketing, or sale of their courses. The comment period closed on October 16, 2009. Staff has reviewed the comments and the Commission is currently reviewing their recommendation.

Jewelry Guides, 16 CFR 23. The Commission sought public comments on its Guides for the Jewelry, Precious Metals, and Pewter Industries, commonly known as the Jewelry Guides. 77 FR 39202 (July 2, 2012). Since completing its last review of the Jewelry Guides in 1996, the Commission revised sections of the Guides and addressed other issues raised in petitions from jewelry trade associations. The Guides explain to businesses how to avoid making deceptive claims about precious metal, pewter, diamond, gemstone, and pearl products, and when they should make disclosures to avoid unfair or deceptive trade practices. The comment period initially set to close on August 27, 2012, was subsequently extended until September 28, 2012. Staff also conducted a public roundtable to examine possible modifications to the Guides in June 2013. Staff is currently reviewing the record, including comments and the roundtable transcript.

Used Auto Parts Guides, 16 CFR 20. The Commission sought public comments on its Guides for the Rebuilt, Reconditioned, and Other Used Automobile Parts Industry, commonly known as the Used Auto Parts Guides, which are designed to prevent the unfair or deceptive marketing of used motor vehicle parts and assemblies, such as engines and transmissions, containing used parts. 77 FR 29922 (May 21, 2012).

The Guides prohibit misrepresentations that a part is new or about the condition, extent of previous use, reconstruction, or repair of a part. Previously used parts must be clearly and conspicuously identified as such in advertising and packaging, and, if the part appears new, on the part itself. The comment period closed on August 3, 2012. Staff is evaluating comments and meeting with commenters, and anticipates making a recommendation to the Commission by late 2013.

Fred Meyer Guides, 16 CFR 240. As part of the periodic review process, 77 FR 71741 (Dec. 4, 2012) (comment period ended Jan. 29, 2013), staff

received public comments relating to whether there is a continuing need for or a need to amend its Guides for Advertising Allowances and Other Merchandising Payments and Services, commonly known as the Fred Meyer Guides. Staff is considering revisions to the Guides in light of the public comments and anticipates that revised Guides will be published during 2013. The Guides assist businesses in complying with sections 2(d) and 2(e) of the Robinson-Patman Act, which proscribe certain discriminations in the provision of promotional allowances and services to customers. Broadly put, the Guides provide that unlawful discrimination may be avoided by providing promotional allowances and services to customers on “proportionally equal terms.”

Final Actions

Since the publication of the 2012 Regulatory Plan, the Commission has issued the following final rules or taken other actions to terminate rulemaking proceedings.

Children's Online Privacy Protection Rule (COPPA Rule), 16 CFR 312. On January 17, 2013, the Commission amended the COPPA Rule to clarify the scope of the Rule and strengthen its protections for children's personal information, in light of changes in online technology since the Rule went into effect in April 2000. 78 FR 3972. The final amended Rule included modifications to the definitions of operator, personal information, and Web site or online service directed to children. The amended Rule also updated the requirements set forth in the notice, parental consent, confidentiality and security, and safe harbor provisions, and adds a new provision addressing data retention and deletion. The amendments were effective on July 1, 2013.

Premier Notification Rules and Report Form, 16 CFR 801–803. On February 1, 2013, the Commission proposed amendments to the HSR rules regarding the withdrawal of HSR filings. See 78 FR 10574. The comment period expired on April 15, 2013. The final rule was issued on June 25, 2013, and effective on August 9, 2013. See 78 FR 41293.²²

Energy Labeling Rule, 16 CFR 305. Regional Efficiency Standards—As required by the Energy Independence and Security Act of 2007, the Commission issued a final rule adding regional information to the familiar

yellow EnergyGuide label on residential furnaces, heat pumps and central air conditioners. The additional information on the new labels, including a map, will help consumers and businesses install equipment appropriate for their location under new Department of Energy (DOE) regional efficiency standards. 78 FR 8362 (Feb. 6, 2013).

*Comparability Ranges—*On July 23, 2013, the Commission issued new EnergyGuide labels for refrigerators and clothes washers, and updated comparative energy consumption information on labels for other appliances, to help consumers compare products in light of new Department of Energy (DOE) tests for measuring energy costs. See 78 FR 43974 (final rule); 78 FR 1779 (NPRM). The amendments are effective on November 15, 2013.

*Periodic Rule Review—*As part of its ongoing regulatory review of the Rule, the Commission amended the Rule by streamlining data reporting requirements for manufacturers, clarifying testing requirements and enforcement provisions, improving online energy label disclosures, and making several minor technical changes and corrections. 78 FR 2200 (Jan. 10, 2013). The Commission continues to consider other issues related to this regulatory review and may seek comment on additional proposals in the future.

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles Rule (“Alternative Fuel Rule”), 16 CFR 309. The Alternative Fuel Rule, which became effective on November 20, 1995, and was last reviewed in 2004, requires disclosure of appropriate cost and benefit information to enable consumers to make reasonable purchasing choices and comparisons between non-liquid alternative fuels, as well as alternative-fueled vehicles. After a periodic review of the Rule, the Commission issued a final rule amendment on April 23, 2013, which (1) consolidated the FTC's alternative fueled vehicle (“AFV”) labels with new fuel economy labels required by the Environmental Protection Agency and the National Highway Traffic Safety Administration; and (2) eliminated the requirement for a separate AFV label for used vehicles. See 78 FR 23832. The amendments became effective on May 31, 2013.

Identity Theft Rules, 16 CFR 681. On December 18, 2010, Congress enacted the Red Flag Program Clarification Act of 2010, Public Law No. 111–319, which limited the scope of entities required to comply with the Red Flag Rule. The amendment provided that a creditor is covered only if, in the ordinary course

²² See *Ongoing Rule and Guide Reviews* for information about a separate ongoing rulemaking proceeding for HSR Rules.

of business, it regularly: obtains or uses consumer reports in connection with a credit transaction; furnishes information to consumer reporting agencies in connection with a credit transaction; or advances funds to or on behalf of a person, in certain cases. The Commission published an Interim Final Rule to implement this legislation on December 6, 2012, which became effective on February 11, 2013. See 77 FR 72712.

Guides for the Use of Environmental Marketing Claims (Green Guides), 16 CFR 260. On October 11, 2012, the Commission issued revised “Green Guides” that are designed to help marketers ensure that the claims they make about the environmental attributes of their products are truthful and non-deceptive. See 77 FR 62122. The revisions to the Green Guides reflected a wide range of public input, including hundreds of consumer and industry comments on previously proposed revisions. They include updates to the existing Guides, as well as new sections on the use of carbon offsets, “green” certifications and seals, and renewable energy and renewable materials claims.

Summary

In both content and process, the FTC’s ongoing and proposed regulatory actions are consistent with the President’s priorities. The actions under consideration inform and protect consumers, while minimizing the regulatory burdens on businesses. The Commission will continue working toward these goals. The Commission’s 10-year review program is patterned after provisions in the Regulatory Flexibility Act and complies with the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission’s 10-year program also is consistent with section 5(a) of Executive Order 12866, which directs executive branch agencies to develop a plan to reevaluate periodically all of their significant existing regulations. 58 FR 51735 (Sept. 30, 1993). In addition, the final rules issued by the Commission continue to be consistent with the President’s Statement of Regulatory Philosophy and Principles, Executive Order 12866, section 1(a), which directs agencies to promulgate only such regulations as are, *inter alia*, required by law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public.

The Commission continues to identify and weigh the costs and benefits of proposed actions and possible alternative actions, and to receive the broadest practicable array of comment from affected consumers, businesses, and the public at large. In sum, the Commission’s regulatory actions are aimed at efficiently and fairly promoting the ability of “private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.” Executive Order 12866, section 1.

II. Regulatory and Deregulatory Actions

The Commission has no proposed rules that would be a “significant regulatory action” under the definition in Executive Order 12866.²³ The Commission has no proposed rules that would have significant international impacts under the definition in Executive Order 13609. Also, there are no international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations under Executive Order 13609.

BILLING CODE 6750-01-P

NATIONAL INDIAN GAMING COMMISSION (NIGC)

Statement of Regulatory Priorities

In 1988, Congress adopted the Indian Gaming Regulatory Act (IGRA) (Pub. L. 100-497, 102 Stat. 2475) with a primary purpose of providing “a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.” IGRA established the National Indian Gaming Commission (NIGC or the Commission) to protect such gaming, amongst other things, as a means of generating tribal revenue.

²³ Section 3(f) of Executive Order 12866 defines a regulatory action to be “significant” if it is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.

At its core, Indian gaming is a function of sovereignty exercised by tribal governments. In addition, the Federal Government maintains a government-to-government relationship with the tribes—a responsibility of the NIGC. Thus, while the Agency is committed to strong regulation of Indian gaming, the Commission is equally committed to strengthening government-to-government relations by engaging in meaningful consultation with tribes to fulfill IGRA’s intent. The NIGC’s vision is to adhere to principles of good government, including transparency to promote agency accountability and fiscal responsibility, to operate consistently to ensure fairness and clarity in the administration of IGRA, and to respect the responsibilities of each sovereign in order to fully promote tribal economic development, self-sufficiency, and strong tribal governments. The NIGC is fully committed to working with tribes to ensure the integrity of the industry by exercising its regulatory responsibilities through technical assistance, compliance, and enforcement activities.

Retrospective Review of Existing Regulations

As an independent regulatory agency, the NIGC has been performing a retrospective review of its existing regulations well before Executive Order 13579 was issued on July 11, 2011. The NIGC, however, recognizes the importance of E.O. 13579 and its regulatory review is being conducted in the spirit of E.O. 13579, to identify those regulations that may be outmoded, ineffective, insufficient, or excessively burdensome and to modify, streamline, expand, or repeal them in accordance with input from the public. In addition, as required by Executive Order 13175, the Commission has been conducting government-to-government consultations with tribes regarding each regulation’s relevancy, consistency in application, and limitations or barriers to implementation, based on the tribes’ experiences. The consultation process is also intended to result in the identification of areas for improvement and needed amendments, if any, new regulations, and the possible repeal of outdated regulations.

The following Regulatory Identifier Numbers (RINs) have been identified as associated with the review: