

FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory Priorities

I. Regulatory 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, brings the best choice of products and services at the lowest prices for consumers.

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. Most notably, 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 vigorously protects consumers through a variety of tools including both regulatory and non-regulatory approaches. To that end, it has encouraged industry self-regulation, developed a corporate leniency policy for certain rule violations, and established compliance partnerships where appropriate.

As detailed below, information privacy and security, the evolving nature of technology, health care, consumer credit and finance issues, and marketing to children continue to be at the forefront of the Commission’s consumer protection and competition programs. By subject area, we discuss the major workshops, reports,³ and initiatives the FTC has pursued since the 2009 Regulatory Plan was published.

(a) Medical and Health Care. On January 13, 2010, FTC staff released a report entitled “Pay-for-Delay: How Drug Company Pay-Offs Cost Consumers Billions.”⁴ The study found that settlement deals featuring payments by branded drug firms to a generic competitor kept generics off the market for an average of 17 months longer than agreements that do not include a payment and cost consumers an estimated \$3.5 billion per year—or \$35 billion over 10 years.

In a speech to the American Medical Association in June 2010, Chairman Jon Leibowitz noted that the new health care reform law establishes programs for Medicare called “accountable care organizations,” or ACOs, as possible devices to improve quality and lower

¹For 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).

²For 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).

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

⁴This report can be found at <http://www.ftc.gov/os/2010/01/100112payfordelayrpt.pdf>.

the cost of health care. On October 5, 2010, the Commission held a public workshop on health care competition policy, payment reform, and the new models for delivering health care that seek to incentivize high-quality, cost-effective care. The FTC workshop focused on how ACOs could affect competition in commercial health care markets.

(b) Assistance to Consumers in Financial Distress. Historic levels of consumer debt, increased unemployment, and an unprecedented downturn in the housing and mortgage markets have contributed to high rates of consumer bankruptcies and mortgage loan delinquency and foreclosure. Debt relief services have proliferated in recent years as the economy has declined and greater numbers of consumers hold debts they cannot pay. During the summer of 2010, the Commission issued a final rule amending the Telemarketing Sales Rule to address the telemarketing of debt relief services offered to consumers.⁵ The amendments are necessary to protect consumers from deceptive or abusive practices in the telemarketing of debt relief services.

The recent national mortgage crisis has launched an industry of companies purporting, for a fee, to obtain mortgage loan modifications or other relief for consumers facing foreclosure. The Commission and other law enforcement have also taken action against mortgage companies that harm consumers through their advertising and servicing practices. The Commission initiated active rulemakings to protect distressed homeowners, one relating to Mortgage Assistance Relief Services (“MARS”) and another relating to Mortgage Acts and Practices (“MAP”) through the life cycle of the mortgage loan.⁶ The MAP proceeding has since been split into rulemakings on MAP-Advertising and MAP-Servicing.

In February 2009, the FTC issued “Collecting Consumer Debts: The Challenges of Change.”⁷ The report noted that the FTC lacked sufficient information on debt collection proceedings. In the summer and fall of 2009, the Commission convened three public roundtables at which it examined consumer protection issues involving

⁵Go to Final Actions and see *Debt Relief Services TSR Rule*.

⁶Go to Rulemakings and Studies Required by Statute and see *Mortgage Loans Rule*.

⁷This can be found at <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>.

debt collections, both in litigation and arbitration proceedings.

In July 2010, the Commission issued a report entitled "Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration."⁸ The report concluded that the system for resolving consumer debt collection disputes is broken and recommended significant litigation and arbitration reforms to improve efficiency and fairness to consumers. The Commission's principal recommendations to address these concerns in litigation included requiring States to adopt measures to make it more likely that consumers will defend themselves in litigation and taking steps to make it less likely that collectors will sue on debt on which the statute of limitations has run, as well as changing Federal and State laws to prevent the freezing of a specified amount in a bank account including funds exempt from garnishment. The report also addresses concerns about requiring consumers to resolve debt collection disputes through binding arbitration without meaningful choice, bias, or the appearance of bias in arbitration proceedings, and procedural unfairness in arbitration proceedings.

(c) Privacy Challenges to Consumers Posed by Technology and Business Practices. The Commission is exploring the privacy challenges posed by technological and business practices that collect and use consumer data. The FTC has held three public roundtables⁹ at which it considered the following issues:

- On December 7, 2009, the FTC focused on the benefits and risks of information-sharing practices, consumer expectations regarding such practices, behavioral advertising, information brokers, and the adequacy of existing legal and self-regulatory frameworks.
- The second roundtable on January 28, 2010, focused on how technology affects consumer privacy, including its role in both raising privacy concerns and enhancing privacy protections and included specific discussions on cloud computing, mobile computing, and social networking.
- On March 17, 2010, a third roundtable addressed Internet architecture and

privacy issues, health and other sensitive consumer information, and lessons that have been learned from the three roundtables and possible ways forward.

The Commission accepted written comments and original research in connection with all three workshops. The Commission expects to release recommendations for public comment during the latter part of 2010.

(d) Food Marketing to Children. In 2008, the FTC issued a report entitled "Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation."¹⁰ As a followup to this report, the Commission held a forum on December 15, 2009, where participants presented new research on the impact of various food advertising techniques on children, discuss the statutory and constitutional issues surrounding governmental regulation of food marketing, and addressed the food and entertainment industries' self-regulatory efforts and implementation of the recommendations in the FTC's 2008 report. The Commission is also a member of an Interagency Working Group on Food Marketed to Children, composed of members of the FTC, the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Department of Agriculture. The working group was established in response to a provision in the FY 2009 Omnibus Appropriations Act (H.R. 1105) and is charged with conducting a study and developing recommendations for nutritional standards for foods marketed to children ages 17 and under. During the fall of 2010, the agencies plan to seek comments on proposed nutrition and marketing standards. Findings and recommendations will be submitted in a report to Congress.

Following receipt of OMB approval on July 8, 2010, on August 12, 2010, the Commission issued information requests to 48 major food and beverage manufacturers, distributors, and marketers, as well as quick-service restaurant companies, about spending and marketing activities targeting children and adolescents and nutritional information for food and beverage products that the companies market to these consumers. The study will advance the Commission's efforts to understand how food industry promotional dollars targeted to children

and adolescents are allocated, the types of activities and marketing techniques the food industry uses to market its products to children and adolescents, and the extent to which self-regulatory efforts are succeeding in improving the nutritional quality of foods advertised to children and adolescents.

(e) Other Children's Initiatives. On December 16, 2009, the Commission, along with other Government agencies, released a cybersafety booklet, "Net Cetera: Chatting with Kids About Being Online."¹¹ This publication provides information to parents and teachers about how to talk to kids about issues like cyberbullying, sexting, mobile phone safety, and protecting the family computer. As of September 12, 2010, the Commission had distributed 4.4 million copies of the English language version and 462,000 copies of the Spanish language version of this publication, as well as 2.7 million related bookmarks.

In the fall of 2009, the Commission contributed a report to the White House Council on Women and Girls.¹² The report highlights five areas, describing, for each, recent FTC law enforcement actions or policy initiatives, as well as available consumer and business education materials. The areas are health care for women and children, marketing to children and adolescents, consumer credit, entrepreneurship and business opportunities, and family pocketbook issues.

On April 28, 2010, the Commission launched "Admongo," a campaign to raise advertising literacy among the Nation's youth. The campaign is targeted to "tweens" aged 8 to 12, and includes a game-based website at Admongo.gov, a curriculum tied to national standards of learning in language arts and social studies that teachers can use to "ad-ucate" students, a library of fictional ads that can be used as teaching tools, and activities for parents and kids to do together. All these materials are free and in the public domain.

Regarding the marketing of violent entertainment to children, the Commission continues to encourage industry groups to improve their self-regulatory programs to discourage the marketing to children of movies, games, and music that the industries' rating or labeling systems indicate are inappropriate for children or warrant parental caution due to their violent

⁸The report is available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>.

⁹See <http://www.ftc.gov/bcp/workshops/privacymarketing/index.shtml>.

¹⁰The report is available at <http://www.ftc.gov/os/2008/07/P064504foodmktingreport.pdf>.

¹¹The booklet can be accessed at <http://www.onguardonline.gov/pdf/tec04.pdf>.

¹²The report is available at <http://www.ftc.gov/os/2010/05/100528cwg-rpt.pdf>.

content. Since the FTC issued its first report on marketing violent entertainment to children in 2000, the Agency has called on the entertainment industry to be more vigilant in three areas: Restricting the marketing of mature-rated products to children, clearly and prominently disclosing rating information, and restricting children's access to mature-rated products at retail.

The FTC's seventh and most recent report concluded that marketers of violent music, movies, and video games can do more to restrict the promotion of these products to children.¹³ This latest report found areas for improvement among music, movie, and video game marketers but credited the game industry with outpacing the other two industries in all three areas. Since 1999, the Commission has issued seven reports on these three industries, examining the industries' compliance with their own voluntary marketing guidelines.

Regarding advertising for beverage alcohol products, the Commission issued on September 8, 2010, orders requiring three mid-sized suppliers to provide information about advertising and marketing practices and compliance with self-regulatory guidelines. In the coming year, the Commission will review the three companies' responses and consult with these companies in light of the information provided. This procedure is consistent with a 2008 commitment by the Commission to conduct small studies of industry self-regulation in years when no major study was underway. Further, in early 2011, the Commission will begin the process of seeking Office of Management and Budget approval, under the Paperwork Reduction Act, to conduct another major study of alcohol marketing and self-regulation; that study will evaluate the advertising practices of the major alcohol suppliers. The Commission will also continue to promote the "We Don't Serve Teens" consumer education program, supporting the legal drinking age.¹⁴

(f) Horizontal Merger Guidelines. In December 2009 and January 2010, the Commission and the Department of Justice (DOJ) solicited public comments

¹³For the most recent report, see "Federal Trade Commission, Marketing Violent Entertainment to Children: A Sixth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording and Electronic Game Industries a Report to Congress" (Dec. 2009), available at <http://www.ftc.gov/os/2009/12/P994511violententertainment.pdf>.

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

and held five joint public workshops to explore the possibility of updating the Horizontal Merger Guidelines that are used by both agencies to evaluate the potential competitive effects of mergers and acquisitions. On April 20, 2010, the Commission released for public comment proposed revisions to the guidelines designed to more accurately reflect the way the FTC and DOJ currently conduct merger reviews. The comment period was extended through June 4, 2010, at the request of several organizations that planned to submit comments.

On August 19, 2010, the two agencies issued revised Horizontal Merger Guidelines, marking the first major revision of the merger guidelines in 18 years and giving businesses a better understanding of how the agencies evaluate proposed mergers. A primary goal of the 2010 guidelines is to help the agencies identify and challenge competitively harmful mergers while avoiding unnecessary interference with mergers that either are competitively beneficial or likely will have no competitive impact on the marketplace. To accomplish this, the guidelines detail the techniques and main types of evidence the agencies typically use to predict whether horizontal mergers may substantially lessen competition. The updated guidelines are available on the FTC's website at <http://www.ftc.gov/os/2010/08/100819hmg.pdf> and the DOJ's website at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>.

(g) *Fraud Forum Report and Surveys.* The FTC hosted a "Fraud Forum" on February 25-26, 2009. The first day was open to the public and addressed the many aspects of fraud today. The second day was open only to domestic and international law enforcement officials and focused on improving interagency coordination in consumer fraud cases. In December 2009, the FTC staff issued a "Fraud Forum" report.¹⁵ The report recommended extending the FTC's outreach to under-served communities, improving victim assistance, combating fraud by enlisting the help of third-parties and targeting third-party enablers and facilitators, expanding contributors to the FTC's Consumer Sentinel database, and making data available to law enforcers.

Separately, the FTC, through its Bureau of Economics, will continue to conduct fraud surveys and related

¹⁵The report is available at <http://www.ftc.gov/os/2009/12/091229fraudstaffreport.pdf>.

research on consumer susceptibility to fraud. For example, pending approval from the Office of Management and Budget, the FTC will conduct an exploratory study during 2011 on consumer susceptibility to fraudulent and deceptive marketing. This research would be conducted to further the FTC's mission of protecting consumers from unfair and deceptive marketing. It is the first of two such studies that the FTC anticipates conducting. Should the FTC pursue the second study, it will seek clearance for it at the appropriate later time. The study is not intended to lead to enforcement actions; rather, study results may aid the FTC's efforts to better target its enforcement actions and consumer education initiatives, and improve future fraud surveys.

(h) Protecting Consumers from Cross-Border Harm. In December 2009, the Commission issued a report examining how the Agency has used the expanded law enforcement authority Congress provided in the U.S. SAFE WEB Act to protect American consumers.¹⁶ This statute authorizes the FTC to share information and work cooperatively with foreign law enforcement agencies to protect consumers from cross-border harm. The report "The U.S. SAFE WEB Act: The First Three Years"¹⁷ provides data on the number of cross-border complaints received by the Commission and a description of specific cases in which the FTC has worked cooperatively with foreign agencies. The Commission recommends that Congress take action to repeal a "sunset" provision that would cause the act to expire in 2013.

On May 6-7, 2010, as part of its ongoing effort to combat cross-border fraud, the Commission hosted counterparts from more than 40 countries to discuss enforcement strategies and emerging consumer protection issues. Agenda topics include decentralized global scams, electronic transactions, emerging trends and risks associated with social networking sites, and advance-fee fraud. During the conference, the FTC and participants in the International Consumer Protection Enforcement Network launched an updated version of the econsumer.gov website, a portal for consumers to file cross-border complaints and find

¹⁶The formal title of the act is the "Undertaking Spam, Spyware, and Fraud Enforcement with Enforcers Beyond Borders Act of 2006" (Pub. L. No. 109-455, amending the FTC Act, 15 U.S.C. sections 41 *et seq.*).

¹⁷This report can be found at <http://www.ftc.gov/os/2009/12/P035303safewebact2009.pdf>.

information about possible ways to resolve their complaints.

(i) Journalism and the Internet. The FTC hosted a series of three workshops entitled "From Town Criers to Bloggers: How Will Journalism Survive the Internet Age?" The workshops considered the following issues.

- The December 1-2, 2009, workshop broadly considered the economics of journalism; the wide variety of new business and non-profit models for journalism; the financial, technological, and other challenges facing the news industry; and a variety of Government policies, including antitrust, copyright, and tax policy, bearing on journalism.
- The second workshop, held on March 9-10, 2010, addressed proposals by workshop participants to better support and lower the costs of journalism. The topics included changes to copyright, tax, and other laws; the potential advantages and disadvantages of combining the interests of for-profit and non-profit investors in hybrid entities; efforts to make Government data more accessible and easily managed in ways that may lower the costs of journalism; and collaborations that news organizations may use to lower their costs and better support journalism.
- On June 15, 2010, the FTC held its final workshop at which experienced journalists, publishers, academics, economists, and other policy experts compared, contrasted, and evaluated the ideas for sustaining journalism that have been set forth by participants in the previous workshops and in a wide variety of reports and conferences. In connection with the third workshop, the FTC staff prepared and posted a discussion draft summarizing the state of journalism today and setting forth the proposals made to date. The document was designed to prompt discussion of whether to recommend policy changes and, if so, which specific proposals would be most useful, feasible, platform-neutral, resistant to bias, and unlikely to cause unintended consequences in addressing emerging gaps in news coverage.

The Commission has received comments in connection with its workshops and intends to release a report during the fall of 2010.

(j) Intellectual Property. The Commission held a series of five hearings on the "Evolving Intellectual

Property (IP) Marketplace." The hearings generally focused on examining changes in intellectual property law, patent-related business models, and new information regarding the operation of the IP marketplace since the issuance of the FTC's October 2003 report, "To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy."

- Overview Hearing. On December 5, 2008, three panels provided an overview of developing business models, recent and proposed changes in IP remedies law, and changes in legal doctrines affecting the value and licensing of patents.
- Remedies. On February 11-12, 2009, the Commission held hearings on damages in patent cases and changes in permanent injunction and willful infringement standards in the wake of recent court decisions.
- Operation of IP Markets. The hearings on March 18-19, 2009, explored how different industries use patents, the economic and legal perspectives on IP and technology markets, and the notice role of patents.
- Markets for Intellectual Property. This April 17, 2009, hearing addressed new business models in the IP market; strategies for buying, selling, and licensing patents; and the role of secondary markets.
- Industry Focus. A May 4-5, 2009, hearing, held in conjunction with the Berkeley Center for Law and Technology and the Berkeley Center for Competition Policy, focused on how markets for patents and technology operate in different industries and how patent policy might be adjusted to respond to problems and better promote innovation and competition.

The Commission is working on a report related to these hearings.

(k) Patent and Competition Policy: Implications for Promoting Innovation. The FTC, the DOJ, and the Department of Commerce's U.S. Patent and Trademark Office held a joint public workshop on May 26, 2010, to explore the intersection of patent policy and competition policy and its implications for promoting innovation. The workshop addressed ways in which careful calibration and balancing of patent policy and competition policy can best promote incentives to innovate.

(l) Self-Regulatory and Compliance Initiatives with Industry.

Additionally, in the industry self-regulation area, the Commission

continues to apply the Textile Corporate Leniency Policy Statement for minor and inadvertent violations of the Textile or Wool Rules that are self-reported by the company. 67 FR 71566 (Dec. 2, 2002). Generally, the purpose of the Textile Corporate Leniency Policy is to help increase overall compliance with the rules while also minimizing the burden on business of correcting (through relabeling) inadvertent labeling errors that are not likely to cause injury to consumers. Since the Textile Corporate Leniency Program was announced, 177 companies have been granted "leniency" for self-reported minor violations of FTC textile regulations.

Finally, the Commission also has engaged industry in compliance partnerships in at least two areas involving 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. Nearly 350 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.

Effect of the Consumer Financial Protection Act of 2010

On July 21, 2010, President Obama signed into law the "Dodd-Frank Wall Street Reform and Consumer Protection Act," Public Law No. 111-203. Title X of the statute, known as the Consumer Financial Protection Act of 2010 (or the Consumer Financial Protection Act), creates a new Bureau of Consumer Financial Protection within the Board of

Governors of the Federal Reserve System (“Federal Reserve Board”). Most of the Commission’s rulemaking authority under certain “enumerated consumer laws” will be transferred to the new bureau within 6 to 18 months after enactment. These laws include all or most of the rulemaking authority under the Truth in Lending Act, the Fair Credit Reporting Act (including the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”)), the Gramm-Leach-Bliley Act (“GLB Act”), the Equal Credit Opportunity Act, the Electronic Funds Transfer Act, the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”), and the Omnibus Appropriations Act of 2009. While the FTC retains its general authority to conduct research and studies, it loses some of its authority to conduct studies under an “enumerated consumer law.” The Act also expands the Commission’s authority in certain areas—for example, with regard to automobile dealers. The impact of the Consumer Financial Protection Act on the Commission’s rulemakings, studies, and guidelines is discussed below.

Rulemakings and Studies Required by Statute

The 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 2009 Regulatory Plan was published.

FACTA Rules. The Commission has already issued nearly all of the rules required by FACTA. These rules are codified in several parts of 16 CFR 600 *et seq.* The remaining active FACTA rulemakings are:

1. **Furnisher Rules.** On July 1, 2009, the Commission and other Federal agencies issued an advance notice of proposed rulemaking (“ANPRM”) that seeks to obtain information that would assist in determining whether it would be appropriate to propose an addition to one of the guidelines that would delineate the circumstances under which a furnisher would be expected to provide an account opening date, or any other types of information, to a consumer reporting agency to promote the integrity of the information. 74 FR 31529. The comment period closed on August 31, 2009.

2. **Model Forms.** The Fair Credit Reporting Act (the “FCRA”) requires the Commission to prescribe a model summary of consumers’ rights under

the FCRA and notices of responsibilities for users and furnishers of credit report information distributed by the consumer reporting agencies. The FTC originally issued these model notices in 1997 and issued revisions in 2004 to reflect FACTA changes. On August 6, 2010, the Commission issued proposed revisions to these models to reflect new rules that have been finalized under FACTA and to improve the clarity and usefulness of the documents. The comment period closed on September 21, 2010. The Commission anticipates that it will publish final revised forms no later than February 2011.

These rulemakings are affected by the Consumer Financial Protection Act, which provides that the Federal Reserve Board’s Bureau of Consumer Financial Protection assumes responsibility for these matters on July 21, 2011 (the “designated transfer date” as determined by the Secretary of the Treasury).

FACTA Studies. On March 27, 2009, the Commission issued Amended Orders to File a Special Report amending the compulsory process resolution dated May 16, 2008, entitled “Resolution Directing Use of Compulsory Process To Study the Effects of Credit Scores and Credit-Based Insurance Scores Under Section 215 of the FACT Act.” This Amended Order requires certain insurance companies to produce information for a study on the use and effect of credit-based insurance scores on consumers of homeowner’s insurance. The Amended Orders were served on nine of the largest private providers of homeowner’s insurance on or about April 6, 2009. The insurers have submitted responses to the requests. This study is not affected by the Consumer Financial Protection Act. Staff continues to review the data produced by the insurers and expects to identify a sample set of data to be used for the study by late fall 2010.

The FTC is also conducting a national study of the accuracy of consumer reports in connection with section 319 of the FACTA. This study is a follow-up to the Commission’s two previous pilot studies that were undertaken to evaluate a potential design for a national study. Section 319 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.¹⁸ This study is also not affected by the Consumer Financial Protection Act.

Mortgage Loans Rule. Section 626 of the Omnibus Appropriations Act of 2009 directed the Commission to initiate a rulemaking proceeding with respect to mortgage loans and prescribed that any violation of the rule shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act regarding unfair or deceptive acts or practices. On June 1, 2009, the Commission published an ANPRM in two parts: (1) Mortgage Acts and Practices (“MAP”) through the life cycle of the mortgage loan (i.e., loan advertising, marketing, origination, appraisals, and servicing), 74 FR 26118, and (2) Mortgage Assistance Relief Services (“MARS”) (i.e., practices of entities providing assistance to consumers in modifying mortgage loans or avoiding foreclosure), 74 FR 26130. The Commission issued an NPRM for MAP-Advertising on September 30, 2010 (74 FR 60352) and the comment period closes on November 15, 2010. The Commission anticipates issuing an NPRM for MAP-Servicing during early 2011. The Commission’s rulemaking authority in this area will be transferred on July 21, 2011, to the Bureau of Consumer Financial Protection under the provisions of the Consumer Financial Protection Act.

The Commission issued an NPRM in the MARS rulemaking on March 9, 2010. 75 FR 10707. The proposed rule would prohibit providers of these services from making false or misleading claims; mandate that providers disclose certain information about these services; bar the collection of advance fees for these services; prohibit persons from providing substantial assistance or support to an entity they know or consciously avoid knowing is engaged in a violation of these Rules; and impose recordkeeping and compliance requirements. The Commission plans to issue a final MARS rule by the end of 2010.

Emergency Technology for Use with ATMs. Section 508 of the “Credit Card Accountability Responsibility and Disclosure Act of 2009” (“Credit CARD Act”), Public Law No. 111-24, mandates

¹⁸Reports to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, Federal Trade Commission, December 2006 and 2008. The reports may be accessed at the FTC’s Web site. December 2006 Report: (http://www.ftc.gov/reports/FACTACT/FACT_Act_Report_2006.pdf); December 2008 Report: (<http://www.ftc.gov/opa/2008/12/factareport.shtm>).

that the Commission prepare a report on emergency PIN and alarm button devices at automated teller machines (ATMs) to automatically alert police about crimes at ATMs. The report entitled “Report on Emergency Technology for Use with ATMs” was issued in April 2010.¹⁹ The report discusses the available information about crimes at ATMs and the costs and benefits of the emergency technologies specified in the act.

Do Not Call Report. Section 4(b) of the “Do-Not-Call Registry Fee Extension Act of 2007” (“Fee Extension Act”), Public Law 110-188, directs the FTC, in consultation with the Federal Communications Commission, to submit a report to Congress on the effectiveness of do-not-call (“DNC”) outreach and enforcement efforts with regard to senior citizens and immigrant communities, the impact of the exceptions to the DNC registry on businesses and consumers, and the impact of abandoned calls made by predictive dialing devices on DNC enforcement. The report, which was submitted to Congress in December 2009, discusses these issues, related changes to the FTC’s Telemarketing Sales Rule, and the enforcement initiatives of both agencies.²⁰

Ten-Year Review Program and Calendar Year 2009 to 2010 Reviews

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 to 612. Under the Commission’s program, rules have been reviewed on a 10-year schedule as resources permit. 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.

¹⁹The report is available at <http://www.ftc.gov/os/2010/05/100504creditcardreport.pdf>.

²⁰This report can be found at <http://www.ftc.gov/os/2010/01/100104dncadditionalreport.pdf>. At that time, the Commission also released a biennial report discussing the National DNC Registry.

The program’s goal is to ensure that all of the Commission’s rules and guides remain in the public interest. It complies with the Small Business Regulatory Enforcement Act of 1996, Public Law No. 104-121. This program is consistent with the Administration’s “smart” regulation agenda to streamline regulations and reporting requirements and section 5(a) of Executive Order 12866, 58 FR 51735 (Sep. 30, 1993).

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.

In March 2010, the Commission determined that it would initiate three reviews. 74 FR 12715. On April 5, 2010, the Commission initiated an additional review for the Children’s Online Privacy Protection Rule. Discussion of these four reviews follows.

Children’s Online Privacy Protection Rule (“COPPA Rule”), 16 CFR 312. The COPPA Rule requires commercial websites and online service providers (operators), with certain exceptions, to obtain verifiable parental consent before collecting, using, or disclosing personal information from or about children under the age of 13. An operator must make reasonable efforts, in light of available technology, to ensure that the person providing consent is the child’s parent. The Commission issued an ANPRM requesting comments on the economic impact and benefits of the rule; possible conflict between the rule and other Federal, State, and local laws and regulations; and the effect on the rule of technological, economic, and other industry changes. 75 FR 17089. The Commission held a public roundtable on the rule on June 2, 2010, and the comment period, as extended, ended on July 12, 2010. Staff anticipates sending a recommendation for next action to the Commission by the end of 2010.

Rule on Retail Food Store Advertising and Marketing Practices (“Unavailability

Rule”), 16 CFR 424. The Unavailability Rule states that it is a violation of section 5 of the Federal Trade Commission 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. The 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. Staff is reviewing the rule and intends to forward a recommendation to the Commission before the end of 2010.

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. By November 2010, staff anticipates that the Commission will request comments on the rule.

Preservation of Consumers’ Claims and Defenses Rule (“Holder-in-Due Course Rule”), 16 CFR 433. Issued in 1975, the Holder-in-Due Course Rule requires sellers to include language in consumer credit contracts that preserves consumers’ claims and defenses against the seller. This rule eliminated the holder-in-due course doctrine as a legal defense for separating a consumer’s obligation to pay from the seller’s duty to perform by requiring that consumer credit and loan contracts contain one of two clauses to preserve the buyer’s right to assert sales-related claims and defenses against a “holder” of the contracts. This rule was initially scheduled to be reviewed during 2010 as part of the periodic review process. However, that prospective review has been put on hold until the Commission can consult with the new Bureau of Consumer Financial Protection that was created pursuant to the Consumer Financial Protection Act about Holder in Due Course issues.

Ongoing Reviews

Since the publication of the 2009 Regulatory Plan, the Commission has

initiated three new rulemaking proceedings and is continuing review of a number of rules and guides. The new rulemaking proceedings are discussed first under (a) Rules, followed by the other rule reviews, and then (b) Guides.

(a) Rules

Mail Order 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. The Commission sought comments about non-substantive changes to the rule to bring it into conformity with changing conditions; including consumers' usage of means other than the telephone to access the Internet when ordering, consumers paying for merchandise by demand draft or debit card, and merchants using alternative methods to make prompt rule-required refunds. 72 FR 51728 (Sep. 11, 2007). Staff has reviewed the comments and anticipates sending a recommendation to the Commission by the end of 2010.

Business Opportunity Rule. The proposed Business Opportunity Rule stems from the recently concluded review of the Franchise Rule, where staff recommended that the rule be split into two parts: One part addressing franchise issues (16 CFR 436) and another part addressing business opportunity issues (16 CFR 437).²¹ After reviewing the comments from an NPRM, 71 FR 19054 (Apr. 12, 2006), the Commission issued a revised NPRM on March 26, 2008, that would require business opportunity sellers to furnish prospective purchasers with specific information that is material to the consumer's decision as to whether to purchase a business opportunity and which should help the purchaser identify fraudulent offerings. 73 FR 16110. The revised NPRM comment period ended on May 27, 2008, and the rebuttal comment period ended on June 16, 2008. A public workshop was held on June 1, 2009, to explore changes to the proposed rule and a related comment period closed on June 30, 2009. On October 28, 2010, the Commission released a staff report²² recommending that coverage of the Business Opportunity Rule be expanded to include work-at-home opportunities such as envelope stuffing, medical

billing, and product assembly, many of which have not been covered before. FTC staff also recommends streamlining the disclosures required by the business opportunity rule so that companies or individuals selling business opportunities make important disclosures to consumers on a simple, easy-to-read document. If adopted, the changes will make it less burdensome for legitimate sellers to comply with the Rule, while still protecting consumers from "widespread and persistent" business opportunity fraud. Public comments on the staff report will be accepted until January 18, 2011.

Hart-Scott-Rodino Rules. For the Hart-Scott-Rodino Premerger Notification Rules (HSR Rules), 16 CFR 801 to 803, Bureau of Competition staff is continuing to review various HSR Rule provisions. On August 13, 2010, the Commission announced it was seeking public comments on proposed changes designed to streamline the HSR form and focus on the information most needed by the agencies in their initial merger review. 75 FR 57110. The proposal eliminates requests for unnecessary information. The new form, however, would require additional information that is needed to help the FTC and DOJ during their initial review of transactions. The comment period closed on October 18, 2010.

Used Car Rule. 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 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. 73 FR 42285 (Jul. 21, 2008). The notice seeks comments on a range of issues including, among others, whether a bilingual Buyers Guide would be useful or practicable, as well as what form such a Buyers Guide should take. Second, the notice seeks comments on possible changes to the Buyers Guide that reflect new warranty products, such as certified used car warranties, that have become increasingly popular since the rule was last reviewed. Finally, the notice seeks comments on other issues including the continuing need for the rule and its economic impact, the effect of the rule on deception in the used car market, and the rule's interaction with

other regulations. The comment period, as extended and then reopened, ended on June 15, 2009. Staff anticipates sending a recommendation to the Commission by November 2010.

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. An ANPRM seeking comment was published on April 21, 2009. 74 FR 18170. The comment period was supposed to close on June 22, 2009, but was extended to September 25, 2009. 74 FR 36972 (Jul. 27, 2009). Staff is reviewing comments as they are received and expects to prepare a recommendation for the Commission by the end of 2010.

Fuel Ratings Rule. The Fuel Ratings Rule sets out a uniform method for determining the octane rating of gasoline from the refiner through the chain of distribution to the point of retail sale. The rule enables consumers to buy gasoline with an appropriate octane rating for their vehicle and establishes standard procedures for determining, certifying, and posting octane ratings. On March 3, 2009, the Commission published an ANPRM and requested comments on the rule as part of its systematic periodic review of current rules and guides. 74 FR 9054. On March 16, 2010, the Commission issued an NPRM proposing to adopt rating, certification, and labeling requirements for certain ethanol fuels; revise the labeling requirements for fuels with at least 70 percent ethanol; and allow the use of an alternative octane rating method. 75 FR 12470. The comment period has ended. Staff anticipates that the Commission will issue a final rule by the end of 2010.

Negative Option Rule. 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,

²¹ Pending completion of the proceeding initiated with this notice, business opportunities presently covered by the requirements of the original Rule will remain covered, as set forth as part 437 of the final amended Rule. 72 FR 15444 (March 30, 2007).

²² The report is available at <http://www.ftc.gov/opa/2010/10.businessopp.shtm>

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 anticipates sending a recommendation to the Commission by December 2010.

Pay-Per-Call Rule. The Commission's review of the Pay-Per-Call Rule, 16 CFR 308, is continuing. The Commission has held workshops to discuss proposed amendments to this rule, including provisions to combat telephone bill "cramming"—inserting unauthorized charges on consumers' phone bills—and other abuses in the sale of products and services that are billed to the telephone including voicemail, 900-number services, and other telephone based information and entertainment services. The most recent workshop focused on the use of 800 and other toll-free numbers to offer pay-per-call services, the scope of the rule, the dispute resolution process, the requirements for a pre-subscription agreement, and the need for obtaining express authorization from consumers before placing charges on their telephone bills. The review record has remained open to encourage additional comments on expansion of the rule's coverage. Staff expects to prepare a recommendation for the Commission by December 2011.

(b) Guides

Fuel Economy Guide. The Fuel Economy Guide for new automobiles, 16 CFR 259, was adopted in 1975 to prevent deceptive fuel economy advertising and to facilitate the use of fuel economy information in advertising. As part of its regular review of all rules and guides, the Commission issued a request for comments on May 9, 2007, on whether to retain or amend the guide. 72 FR 26328. The Commission sought comments on, among other things, whether there is a continuing need for the guide and, if so, what changes should be made to it, if any, in light of Environmental Protection Agency amendments to fuel economy labeling requirements for automobiles. On April 28, 2009, the Commission published proposed amendments to the Guide. 74 FR 19148. The deadline for comments was June 16, 2009. Staff is reviewing the comments and expects to make a recommendation by the end of 2010.

Green Guides. The Green Guides, 16 CFR 260, outline general principles that apply to all environmental marketing claims and provide guidance regarding specific environmental claims. The Commission sought comment on the

need for the guides and their economic impact, the effect of the guides on the accuracy of various environmental claims, and the interaction of the guides with other environmental marketing regulations. 72 FR 66091 (Nov. 27, 2007). As part of its review, during 2008, the Commission held workshops and received comments in three specific areas: 1) Carbon offsets and renewable energy certificates (Jan. 8, 2008); 2) environmental packaging claims and green packaging (Apr. 30, 2008); and 3) developments in green building and textiles claims and consumer perception of such claims (Jul. 15, 2008). After reviewing the , the transcripts of the three public workshops that explored the emerging issues, and the results of its additional consumer perception research, the Commission proposed on October 15, 2010, several modifications and additions to the Guides that aim to respond to changes in the marketplace and help marketers avoid making unfair or deceptive environmental marketing claims. 75 FR 63552. The proposed changes to the Green Guides include new guidance on marketers' use of product certifications and seals of approval, "renewable energy" claims, "renewable materials" claims, and "carbon offset" claims. The Commission seeks public comment by December 10, 2010.

Fair Debt Collection Practices Act (FDCPA) Enforcement Policy Statement Regarding Communications in Connection With Collection of a Decedent's Debt. The Commission requests public comment on a proposed statement of enforcement policy regarding communications in connection with collection of a decedent's debts. The statement addresses three issues pertaining to debt collectors who attempt to collect on the debts of deceased debtors. First, the proposed statement announces that the FTC will not bring enforcement actions for violations of Section 805(b) of the FDCPA, 15 USC, 1692c(b), against collectors, who, in connection with the collection of a decedent's debt, communicate with a person who has authority to pay the decedent's debt from the assets of the decedent's estate. Second, the proposed statement clarifies how a debt collector may locate the appropriate person with whom to discuss the decedent's debt. Third, the proposed statement emphasizes to collectors that misleading consumers about their personal obligation to pay a decedent's debt is a violation of the FDCPA and Section 5 of the FTC Act, 15 USC 45. Public comments must be received by November 8, 2010.

Vocational Schools Guides. The Commission is seeking public comments on its Private Vocational and Distance Education Schools Guides, commonly known as the Vocational Schools Guides. 74 FR 37973 (Jul. 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 is reviewing comments and anticipates sending a recommendation for next action to the Commission by the end of 2010.

Final Actions

Since the publication of the 2009 Regulatory Plan, the Commission has issued the following final rules or taken other actions to terminate rulemaking proceedings.

Telemarketing Sales Rule (TSR) - Debt Relief Services. The Commission issued an NPRM seeking comments on a proposal to amend the TSR to address the sale of debt relief services, including: For-profit credit counselors; debt settlement companies that promise to obtain substantially reduced, lump sum settlements of consumers' debts; and debt negotiators that offer to obtain interest rate reductions or other concessions to lower consumers' monthly payments. 74 FR 41988 (Aug. 19, 2008). The comment period, as extended, closed on October 26, 2009, and the Commission held a public forum in November 2009. This rulemaking was not affected by the Consumer Financial Protection Act.

On July 29, 2010, the Commission announced a final rule providing that telemarketers of for-profit companies that sell debt relief services over the telephone may no longer charge a fee before they settle or reduce a customer's credit card or other unsecured debt. The rule also imposes conditions on accounts that debt relief companies may establish for consumers to set aside their fees and savings for payment to creditors. The rule also requires certain disclosures to consumers related to the fundamental aspects of their services (time to see results, cost) and prohibits misrepresentations related to success rates and non-profit status. With the exception of the advance fee ban which is effective October 27, 2010, the rule's

provisions are effective September 27, 2010. 75 FR 48458. On October 27, 2010, the Commission announced an enforcement policy for the TSR Debt Relief Services Rule: the Commission will defer enforcement of the new rule for tax debt relief services until further notice. The Enforcement policy states, however, that tax debt relief services must comply with the other portions of the FTS's Telemarketing Sales Rule during the enforcement deferral period. Companies that sell other kinds of debt relief services over the telephone continue to be subject to enforcement of the TSR Debt Relief Services Rule, including the prohibition against charging fees before settling or reducing a consumer's credit card or other unsecured debt.

Free Credit Reports: Deceptive Marketing Practices. Section 205 of the Credit CARD Act required the Commission to issue a rule to prevent deceptive marketing of "free credit reports." On October 15, 2009, the Commission issued an NPRM to amend the Free Credit Reports Rule to require prominent disclosures in advertising for "free credit reports" and to address practices that interfere with consumers' ability to obtain file disclosures from consumer reporting agencies. 74 FR 52915. As required by statute, the Commission issued a final rule on February 22, 2010, which was published in the Federal Register. 75 FR 9726. With the exception of disclosure provisions related to television and radio advertisements effective September 1, 2010, the rule became effective on April 2, 2010.

FACTA Risk-Based Pricing Rule. The Commission, jointly with the Federal Reserve, published a risk-based pricing proposal for comment on May 19, 2008. 73 FR 28966. The comment period ended on August 18, 2008. Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment by that consumer. This statutorily required rulemaking would address the form, content, time, manner, definitions, exceptions, and model of a risk-based pricing notice.

The agencies issued final rules on January 15, 2010. 75 FR 2724. The final rules generally require a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or

through that creditor. The final rules also provide two alternative means by which creditors can determine when they are offering credit on terms that are materially less favorable and include certain exceptions to the general rule, including exceptions for creditors that disclose a consumer's credit score in conjunction with additional information providing context for the credit score disclosure. The rules are effective January 1, 2011.

FDICIA Rule. The Federal Deposit Insurance Corporation Improvement Act of 1991 assigned to the Commission responsibilities for certain non-federally insured depository institutions ("DIs") and private deposit insurers of such DIs. The FTC is required to prescribe, by regulation or order, the manner and content of certain disclosures required of DIs that lack Federal deposit insurance. From 1993 to 2003, the Commission was statutorily barred on an annual basis from appropriating funds for purposes of complying with FDICIA. The Consolidated Appropriations Act of 2004 and yearly appropriations thereafter have not imposed the same funding prohibition, and the Commission issued an NPRM on March 16, 2005. 70 FR 12823. Subsequently, Congress passed the Financial Services Regulatory Relief Act of 2006 ("FSRRA") amending FDICIA and addressing several aspects of the FTC's proposed rule. A revised NPRM consistent with the FSRRA was issued on March 14, 2009. 74 FR 10843. The Commission issued a final rule on June 4, 2010, effective July 6, 2010. 75 FR 31682.

Gramm-Leach-Bliley Rule. Pursuant to section 728 of the Financial Services Relief Act of 2006, Public Law No.109-351, which added section 503(e) to the GLB Act, the Commission together with seven other Federal agencies²³ was directed to propose a model form that may be used at the option of financial institutions for the privacy notices required under GLB. The 2006 amendment provided that the agencies must propose the model form within 280 days after enactment or by April 11, 2007. On March 29, 2007, the GLB agencies issued an NPRM proposing as the model form the prototype privacy notice developed during the consumer testing research project undertaken by first six, and then seven, of these

agencies. 72 FR 14940. On November 19, 2009, the Commission and the seven agencies announced a model form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rule. 74 FR 62890 at 62965-74 (amendments to FTC rules). With the exception of certain amendments effective January 1, 2012, the rules became effective December 31, 2009.

Energy Labeling Rule for Light Bulbs. Section 321 of the Energy Security and Independence Act (ESIA) required the Commission to conduct a rulemaking to consider the effectiveness of current energy labeling for light bulbs and to consider alternative labeling approaches. In response to that directive, the Commission issued an ANPRM on July 17, 2008, seeking comments on the effectiveness of current labeling requirements for lamp packages and possible alternatives to those requirements. 73 FR 40988. After reviewing the comments, the Commission issued an NPM on November 10, 2009, proposing a two-panel labeling format for light bulb packages and mandatory disclosures including brightness, energy cost, bulb life, color appearance, wattage, and mercury content. 74 FR 57950. On July 19, 2010, the Commission issued a final rule adopting the two-panel labeling format and the brightness, energy-cost, and other disclosure requirements. 75 FR 41696. With the exception of certain amendments that will become effective on August 18, 2010, the new labeling requirements become effective on July 19, 2011. The Commission also sought further comment by September 20, 2010, on several issues for consideration in any subsequent rulemaking.

Consumer Electronics Rule. The Commission has authority under section 325 of ESIA to promulgate energy labeling rules for consumer electronic (Consumer Electronics Rule). On March 16, 2009, the Commission published an ANPRM seeking comments on whether it should require labels for consumer electronics, including televisions, computers, video recorder boxes, and certain other equipment; the disclosures, need, and format or labels, and appropriate test procedures. 74 FR 11045. On March 11, 2010, the Commission issued an NPM that would require EnergyGuide labels and disclose requirement for televisions. The Commission did not propose requirements for other consumer electronics but it did seek comments on the subject. 75 FR 11483. The comment period closed on May 14, 2010. As part

²³The agencies are the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Corporation.

of this effort the Commission scheduled a public meeting on April 16, 2010. On October 27, 2010, the Commission announced it was issuing a final rule that will require televisions manufactured after May 10, 2010, to display EnergyGuide labels that include information on estimated yearly energy and the cost range compared to similar models.

Amplifier Rule. The Amplifier Rule, 16 CFR 432, assists consumers in purchasing by standardizing the measurement and disclosure of various performance attributes of power amplification equipment for home entertainment purposes. The rule makes it an unfair or deceptive act or practice for manufacturers and sellers of sound power amplification equipment for home entertainment purposes to fail to disclose certain performance information in connection with direct or indirect representations of power output, power band, frequency, or distortion characteristics. The rule also sets out standard test conditions for performing the measurements that support the required performance disclosures. On February 27, 2008, the Commission published a request for comments including a number of specific issues related to changes in technology and products. 73 FR 10403. The comment period ended on May 12, 2008. On January 26, 2010, the Commission announced it was retaining the rule as currently written but issued guidance concerning testing requirements for measuring power ratings of multichannel amplifiers. 75 FR 3985.

Smokeless Tobacco Regulations. The Commission's review of the Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Regulations"), 16 CFR 307, has been completed. The Smokeless Tobacco Regulations govern the format and display of statutorily mandated health warnings on all packages and advertisements for smokeless tobacco. On June 22, 2009, Congress enacted the "Family Smoking Prevention and Tobacco Control Act," Public Law No. 111-31, which imposed new requirements for smokeless tobacco health warnings and transferred authority over these warnings to the Department of Health and Human Services. As a result, the Commission closed both the regulatory review and a separate NPRM (published in 1993). 75 FR 3664. On September 28, 2010, the Commission rescinded its smokeless tobacco regulations, concluding they no longer serve any purpose and actually

conflict with the new statutory provisions. 75 FR 59609. Indeed, retention of these regulations could generate confusion if some smokeless tobacco manufacturers and importers mistakenly believe that they reflect current legal requirements.

Endorsements and Testimonials in Advertising Guides. On January 16, 2007, the Commission requested public comments on the overall costs, benefits, and regulatory and economic impact of its Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR 255. The Commission also released consumer research it commissioned regarding the messages conveyed by consumer endorsements and sought comment both on this research and upon several other specific endorsement-related issues. 72 FR 2214 (Jan. 18, 2007). After reviewing the comments, the Commission proposed changes to the guides and requested public comments. 73 FR 72374 (Nov. 28, 2008). The initial comment period ended on January 30, 2009, but was subsequently extended to March 2, 2009. 74 FR 5810 (Feb. 2, 2009). On October 5, 2009, the Commission announced revisions to the guides effective December 1, 2009. 74 FR 53214. Under the revised Guides, advertisements that feature a consumer and convey his or her experience with a product or service as typical when that is not the case will be required to clearly disclose the results that consumers can generally expect. In contrast to the prior version of the Guides, which allowed advertisers to describe unusual results in a testimonial as long as they included a disclaimer such as "results not typical," the revised Guides no longer contain this safe harbor. The revised Guides also add new examples (i.e., bloggers or celebrity endorsers) to illustrate the long standing principle that "material connections" (sometimes payments or free products) between advertisers and endorsers—connections that consumers would not expect—must be disclosed.

Guides for Jewelry, Precious Metals and Pewter Industries. After issuing a staff advisory opinion indicating that the Commission's current guidelines for Jewelry, Precious Metals and Pewter Industries, 16 CFR part 23, do not address descriptions of new platinum alloy products, the Commission issued a Request for Public Comments on Whether the platinum section of the Guides for Jewelry, Precious Metals and Pewter Industries, should be amended to provide guidance on how to non-deceptively mark or describe products

containing between 500 and 850 parts per thousand pure platinum and no other platinum group metals. 70 FR (July 5, 2005). After reviewing the comments, the Commission issued a notice on February 20, 2008, seeking comment on proposals to amend the platinum section of the Guides to address the new platinum alloys. 73 FR 10190. The extended comment period ended on August 25, 2008. 73 FR 22848 (April 28, 2008).

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 (Sep. 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." E.O. 12866, section 1.

II. Regulatory Actions

(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.

The Commission has no proposed rules that would be a "significant regulatory action" under the definition in Executive Order 12866.²⁴

BILLING CODE 6750-01-S

²⁴Section 3(f) of the Executive Order defines a regulatory action to be "significant" if it is likely to result in a rule that may:

NATIONAL INDIAN GAMING COMMISSION (NIGC)

Statement of Regulatory Priorities

Congress adopted the Indian Gaming Regulatory Act (IGRA) (Pub. L. 100-497, 102 Stat. 2475) in 1988. A primary purpose of the Act is to “provide 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.” The Act established the National Indian Gaming Commission (NIGC or the Commission) to protect such gaming, among other things, as a means of generating tribal revenue.

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 committed to strengthening government-to-government relations by engaging in meaningful consultation with tribes to fulfill the intent of the IGRA. Our 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 the 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 committed to working with tribes to ensure the integrity of the industry by exercising its regulatory responsibilities through assistance, compliance, and enforcement activities.

The Commission intends to review its current regulations and guidance for effectiveness and to consult with tribes about relevancy, consistency in application, and limitations or barriers to implementation, based upon their experiences, to identify areas of improvement and any needed amendments. Accordingly, the Commission has added a regulatory review action to this semiannual regulatory agenda. Regarding those regulatory actions identified in spring 2010, the Commission has maintained those descriptions but extended the timetable of each regulatory action by 1 year to reflect this review. The Commission is withdrawing the notice regarding Indian hiring preference because it will implement the

preference through internal policy. The Commission recently began an initial series of government-to-government consultations with tribes seeking their views on how to prioritize its review of the regulations. The Commission will continue with government-to-government consultation on this issue as it develops a regulatory review schedule.

NIGC

PROPOSED RULE STAGE

172. TRIBAL BACKGROUND INVESTIGATION SUBMISSION REQUIREMENTS AND TIMING

Priority:

Other Significant

Legal Authority:

25 USC 2706(b)(3); 25 USC 2706(b)(10);
25 USC 2710(b)(2)(F)(ii); 25 USC
2710(c)(1)-(2); 25 USC 2710(d)(2)(A)

CFR Citation:

25 CFR 556; 25 CFR 558

Legal Deadline:

None

Abstract:

It is necessary for the National Indian Gaming Commission (NIGC) to modify certain regulations concerning background investigations and licensing to streamline the process for submitting information, ensure that the process complies with the Indian Gaming Regulatory Act (IGRA), and distinguish the requirements for temporary and permanent licenses.

Statement of Need:

Modifications to specific background investigation and licensing regulations are needed to ensure compliance with the Indian Gaming Regulatory Act (IGRA), which mandates that certain notifications be submitted to the Commission. Modifications are also needed to reduce the quantity of documents submitted to the Commission under these regulations and to distinguish the requirements for temporary and permanent licenses.

Summary of Legal Basis:

It is the goal of NIGC to provide regulation of Indian gaming to shield it from organized crime and other corrupting influences as well as to assure that gaming is conducted fairly

and honestly. (25 U.S.C. 2702). The Commission is charged with the responsibility of monitoring gaming conducted on Indian lands. (25 U.S.C. 2706(b)(1)). IGRA expressly authorizes the Commission to “promulgate such regulations and guidelines as it deems appropriate to implement the provisions of the (Act).” (25 U.S.C. 2706(b)(10)). Sections 2710(b)(2)(F) and 2710(d)(A) require tribes to have an adequate system for background investigations of primary management officials and key employees and inform the Commission of the results of those investigations. Under section 2710(c), the Commission may also object to licenses or require a tribe to suspend a license. The Commission relies on these sections of the statute to authorize the modification of the background and licensing regulations to ensure compliance with IGRA, reduce the quantity of documents submitted to the Commission, and distinguish the requirements for temporary and permanent licenses.

Alternatives:

If the Commission does not modify these regulations to reduce the quantity of documents submitted under them, tribes will continue to be required to submit these documents to the Commission. Further, to ensure compliance with IGRA, the modifications mandating notifications to the Commission regarding the results of background checks and the issuance of temporary and permanent gaming licenses must be made.

Anticipated Cost and Benefits:

These modifications to the background investigation and licensing regulations will reduce the cost of regulation to the Federal Government by reducing the amount of documents received from tribes that must be processed and retained. Further, these modifications will reduce the quantity of documents that tribes are required to submit to the NIGC, which will result in a cost savings to the tribes. There are minimal anticipated cost increases to tribal governments due to additional notifications to the NIGC.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
NPRM	09/00/11	