Federal Register

Part LVIII

Federal Trade Commission

Semiannual Regulatory Agenda
FEDERAL TRADE COMMISSION (FTC)

FEDERAL TRADE COMMISSION
16 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: Federal Trade Commission.

ACTION: Semiannual regulatory agenda.


The Commission has identified a rulemaking that is related to the events of September 11, 2001, because the USA PATRIOT Act, Pub.L. 107-56, 115 Stat. 272, amended the Telemarketing and Consumer Fraud and Abuse Prevention Act, 16 USC 6101-6108, and thus affects the Telemarketing Sales Rule, 16 CFR part 310.

The Commission has responded to the optional information requirement that corresponds to the requirements of Executive Order 13132, "Federalism" of August 4, 1999. 64 FR 43255 (Aug. 10, 1999). The Commission believes that none of the rules in this Agenda has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government" within the meaning of E.O. 13132. The Commission continues to work closely with the States and other governmental units in its rulemaking process, which explicitly considers the effect of the agency's rules on these governmental entities.

In addition, the agency has responded to the optional information requirement that corresponds to the requirements of Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use." 66 FR 28355 (May 22, 2001). The Commission believes that none of the rules in this agenda meets this Executive Order's criteria requiring preparation of a Statement of Energy Effects.

The agency also is conducting reviews of the Pay-Per-Call Rule as provided in the Rule and of the Telemarketing Sales Rule as required by the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 USC 6101-6108. Most of the other reviews listed in the following agenda are being conducted as part of the Commission's plan to review and seek information about all of its regulations and guides, including their costs and benefits, and regulatory and economic impact every ten years. These reviews incorporate and expand upon the review required by the RFA and regulatory reform initiatives directing agencies to conduct a review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform.

Except for notice of completed actions, the information in this agenda represents the judgment of Commission staff, based upon information now available. Each projected date of action reflects an assessment by the FTC staff of the likelihood that the specified event will occur during the coming year. No final determination by the staff or the Commission respecting the need for, or the substance of, a trade regulation rule or any other procedural option should be inferred from the notation of projected events in this agenda. In most instances, the dates of future events are listed by month, not by a specific day. The acquisition of new information, changes of circumstances, or changes in the law may alter this information.

FOR FURTHER INFORMATION CONTACT: For information about specific regulatory actions listed in the agenda, contact the agency contact listed for each particular proceeding. Comments or inquiries of a general nature about the Agenda should be directed to Sandra M. Vidas, Attorney, telephone: (202) 326-2456; e-mail: svidas@ftc.gov; or G. Richard Gold, Attorney, telephone: (202) 326-3355; e-mail: rgold@ftc.gov, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

By direction of the Commission. 
Donald S. Clark, Secretary.

Federal Trade Commission—Prerule Stage

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<th>Sequence Number</th>
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Federal Trade Commission—Long—Term Actions

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Federal Trade Commission—Completed Actions

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Federal Trade Commission (FTC) Prerule Stage

4166. REGULATORY REVIEW
Priority: Other Significant
Legal Authority: 15 USC 41 et seq
CFR Citation: 16 CFR 1 et seq
Legal Deadline: None
Abstract: The Commission is continuing its review of current rules and guides to identify any that should be modified or rescinded. The Commission will continue to consider ways to streamline and improve the review program. On March 4, 2002, the Commission published a tentative timetable for its regulatory review program under which all of the Commission’s rules and guides are reviewed over a ten year period. 67 FR 9630 (Mar. 4, 2002). On January 17, 2003, the Commission announced that it will review one rule, two guides, and the statements of general policy or interpretations under the Fair Credit Reporting Act during 2003. 68 FR 2465 (Jan. 17, 2003). No determination about whether to modify or rescind a rule, guide or interpretation or any other procedural option should be inferred from the Commission’s decision to publish a request for comments. In certain instances, the reviews may also address other specific matters or issues, such as proposed amendments. Finally, the Commission may modify the rule review timetable as circumstances warrant.

Timetable:

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<td>Notice of Rules and Guides to Review in 2003</td>
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Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Phone: 202 326—3038
Email: nblickman@ftc.gov
RIN: 3084–AA47

4167. REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986
Priority: Substantive, Nonsignificant
Legal Authority: 15 USC 4401
CFR Citation: 16 CFR 307
Legal Deadline: None
Abstract: The Comprehensive Smokeless Tobacco Health Education Act of 1986 requires health warnings on all packages and advertisements for smokeless tobacco. The Act directs the Commission to issue implementing Rules governing the format and display of the warnings. On November 4, 1986, the Commission issued its Rules setting out the provisions for the size, color, typeface, and rotation of the statutory warnings. In FY 2000, the Commission undertook a periodic review of the Rules. The purpose of the review was to determine whether the Rules continue to effectively meet the goals of the Act and to seek information concerning the Rules, particularly their economic impact, in order to decide whether they should be amended. Staff plans to forward its recommendations to the Commission this year.
on November 1, 1993. TDDRA granted the Commission limited jurisdiction over common carriers for purposes of the Rule. The Rule requires that
advertisements for 900—numbers contain certain disclosures; requires that anyone who calls a 900—number service be given the opportunity to
hang up at the conclusion of the preamble without incurring any charge
for the call; and establishes procedures for resolving billing disputes for 900—
number calls and other telephone—billed purchases. The Rule itself
required the Commission to initiate a review of the Rule prior to November
1997. As part of this review, the Commission published a notice in the
Federal Register on March 12, 1997, requesting comments on, among other things, the economic impact of and the continuing need for the Rule, and the effect on the Rule of any technological or industry changes. The Commission also sought comments, pursuant to
authority granted under the Telecommunications Act of 1996, on whether to expand the Rule to govern other similar audio information and
entertainment services. Staff held a public workshop on June 19—20, 1997, during which members of the industry discussed issues raised in the
comments, including billing and collection issues and possible ways to expand the definition of “pay—per—
call services.” Many commenters
reported that the Rule has been successful in reducing the abuses that
led to the passage of TDDRA. Despite
the success of the Rule in correcting the abuses in the 900—number
industry, complaints about other types of audiotacl services (accessed via
dialing patterns other than 900
numbers) are being reported. The
majority of complaints now involve 800
numbers, international numbers, or
other dialing patterns that do not use
the 900—number prefix. Many
consumer and law enforcement
agencies also have been receiving
complaints from consumers who have
discovered unexplained charges (in
some cases, recurring charges) on their
telephone bills for services that were
ever authorized, ordered, received, or
used, a practice known as “cramping.”
On October 30, 1998, the Commission
published an NPRM that would expand
the definition of “pay—per—call”
services beyond 900 numbers and that
would implement measures to combat
telephone bill cramming. The proposed
revisions would: (1) require the express
authorization of the person to be billed
for the purchase of any “telephone—
billed purchases” that cannot be
blocked by 900—number blocking; (2)
prohibit vendors from billing consumers for monthly or other recurring charges for pay—per—call
services unless the vendor had entered
into a “presubscription agreement”
with the person to be billed and had
sent the consumer a written copy of
the agreement; and (3) give consumers
legal recourse to dispute unauthorized
charges crammed on phone bills and
have those charges removed. The
comment period was extended to
March 10, 1999, and a workshop—
conference was held on May 20—21,
1999. At the workshop, participants
discussed issues raised by the
comments, such as the meaning of
“express authorization” and the
requirements for a presubscription
agreement. Staff plans to forward
recommendation to the Commission by
early 2004.

4168. TRADE REGULATION RULE
PURSUANT TO THE TELEPHONE
DISCLOSURE AND DISPUTE
RESOLUTION ACT OF 1992
Priority: Substantive, Nonsignificant
Legal Authority: 15 USC 5701 et seq; 15 USC 5714(1)
CFR Citation: 16 CFR 308
Legal Deadline: None
Abstract: Congress enacted the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) to
curtail certain unfair and deceptive
practices perpetrated by some pay—
per—call businesses, and to encourage
the growth of the legitimate pay—per—
call industry. TDDRA mandated that
the FTC promulgate a rule to curb these
practices; the Pay—Per—Call or 900—
Number Rule (Rule) became effective

Timetable:

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Regulatory Flexibility Analysis
Required: Yes
Small Entities Affected: Businesses
Government Levels Affected: None
Phone: 202 326—2174
Email: rrosso@ftc.gov
RIN: 3084–AA78
4169. TRADE REGULATION RULE ON OPHTHALMIC PRACTICE RULES

Priority: Substantive, Nonsignificant
Legal Authority: 15 USC 41 et seq
CFR Citation: 16 CFR 456
Legal Deadline: None

Abstract: Issued in 1978, the Trade Regulation Rule on Ophthalmic Practice Rules, also known as the Prescription Release Rule, provides that an optometrist or ophthalmologist must give the patient, at no extra cost, a copy of the eyeglass prescription immediately after the examination is completed. The Rule also prohibits optometrists and ophthalmologists from conditioning the availability of an eye examination, as defined by the Rule, on a requirement that the patient agrees to purchase ophthalmic goods from the optometrist or ophthalmologist, and from placing on the prescription, or delivering to the patient, certain disclaimers or waivers of liability. The Rule does not require an optometrist or ophthalmologist to release a contact lens prescription to a patient after an eye exam. As part of its systematic review of all Commission rules and guides, the Commission has requested comments on the economic impact of, and the continuing need for, this Rule, possible conflict between the Rule and State, local, or other Federal laws, and the effect on the Rule of any technological, economic, or other industry changes. Staff is evaluating the comments received and formulating a recommendation as to whether the Commission should retain the Rule or initiate a rulemaking to revise or repeal it.

Timetable:

Regulatory Flexibility Analysis Required: No
Small Entities Affected: Businesses
Government Levels Affected: None
Agency Contact: Kial Young, Federal Trade Commission, Division of Advertising Practices, Bureau of Consumer Protection, Washington, DC 20580
Phone: 202 326—3525
Email: kyoung@ftc.gov

Phone: 202 326—3291
Email: mdaynard@ftc.gov
RIN: 3084–AA80

4170. LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE—FUELED VEHICLES

Priority: Substantive, Nonsignificant
Legal Authority: 42 USC 13232(a)
CFR Citation: 16 CFR 309
Legal Deadline: None

Abstract: The Rule, which became effective on November 20, 1995, requires disclosure of appropriate cost and benefit information to enable consumers to make reasonable purchasing choices and comparisons between nonliquid alternative fuels as well as alternative—fueled vehicles. As part of its ongoing systematic review of all Federal Trade Commission rules and guides, the Commission requested comments on, among other things, the economic impact and benefits of this Rule; possible conflict between the Rule and State, local, or other Federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes. The Commission also requested comments on specific options for modifying the Rule’s alternative—fueled vehicle label in light of new Environmental Protection Agency tailpipe emissions standards. No Commission determination on the need for or the substance of the Rule should be inferred from the intent to publish requests for comments. The staff expects to forward its recommendation on a final rule to the Commission during November 2003.

Timetable:

Regulatory Flexibility Analysis Required: No
Small Entities Affected: Businesses
Government Levels Affected: None
Phone: 202 326—3038
Email: nblickman@ftc.gov
RIN: 3084–AA89

4171. RULES AND REGULATIONS UNDER THE HOBBY PROTECTION ACT

Priority: Substantive, Nonsignificant
Legal Authority: 15 USC 2101 et seq
CFR Citation: 16 CFR 304
Legal Deadline: None

Abstract: The Rule, which became effective on February 6, 1975; prescribes the required markings on imitation political and numismatic items, specifying the sizes and dimensions of the type, the location of the marking, and how to mark incunable (those that can be impressed with a stamp) and nonincusable items. Specifically, imitation political items—such as buttons, posters, coffee mugs and the like—must be marked with the calendar year they were manufactured, and imitation numismatic items—including coins, tokens and paper money—must be marked with the word “copy.” As part of its ongoing systematic review of all Federal Trade Commission rules and guides, the Commission has requested public comments on, among other things, the economic impact and benefits of the Rule; possible conflict between the Rule and State, local, or other Federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes. 68 FR 9856 (Mar. 3, 2003). For example, the Federal Register notice asks for comments on whether changes in the relevant technology, such as e-mail and the Internet, affects the Rule since it was issued. No Commission determination on the need for or the substance of the Rule should be inferred from the intent to publish requests for comments. The staff expects to forward a recommendation to the Commission during November 2003.

Timetable:

Phone: 202 326—3038
Email: nblickman@ftc.gov
RIN: 3084–AA89

Notice of Intent to Request Comments
01/17/03 68 FR 2465
4172. TRADE REGULATION RULE CONCERNING THE LABELING AND ADVERTISING OF HOME INSULATION

Priority: Substantive, Nonsignificant
Legal Authority: 15 USC 41 et seq
CFR Citation: 16 CFR 460
Legal Deadline: None

Abstract: The Federal Trade Commission’s Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (Rule) became effective on September 29, 1980. The Rule is designed to assist consumers in evaluating and comparing the thermal performance characteristics of competing home insulation products by specifically requiring manufacturers of home insulation products to provide information about the product’s degree of resistance to the flow of heat (R—Value). The Rule also establishes uniform standards for testing, information disclosure, and substantiation of product performance claims. As part of the systematic review of its rules and guides, the Commission requested comments on, among other things, the economic impact of and the continuing need for this Rule, possible conflicts between the Rule and State, local and other Federal laws, and the effect on the Rule of any technological, economic, or other industry changes. In response to the comments received, the Commission issued an advance notice of proposed rulemaking (ANPRM) seeking comment on whether it should initiate a rulemaking proceeding to amend the Rule to recognize technological advances in R—Value testing and specimen preparation procedures, and to clarify and streamline the Rule’s requirements. The Commission reviewed the comments received on the ANPRM and issued a notice of proposed rulemaking (NPRM), which proposed a number of amendments to the Rule. The staff expects to forward its recommendation to the Commission by March 2004.

4173. TRADE REGULATION RULE ON FRANCHISING AND BUSINESS OPPORTUNITY VENTURES

Priority: Substantive, Nonsignificant
Legal Authority: 15 USC 41 to 58
CFR Citation: 16 CFR 436
Legal Deadline: None

Abstract: The Federal Trade Commission’s Trade Regulation Rule on Franchising and Business Opportunity Ventures (Franchise Rule) became effective on October 21, 1979. The Rule is designed to reduce deceptive and unfair practices in the sale of franchises and business opportunities by requiring the pre—sale disclosure of material information about the franchise. For example, the Rule requires franchisors to disclose their business background and litigation history, as well as the number of failed and terminated franchise units. The Rule also requires the disclosure of material terms of the franchise relationship, such as recurring fees and termination and renewal rights. The Rule further requires the franchisor to provide an audited financial statement for the most recent three fiscal years. Finally, the Rule requires any franchisor who makes earnings representations to provide the prospective franchisee with earnings claims document that substantiates those claims. On February 28, 1997, the Commission published an advance notice of proposed rulemaking (ANPRM) contemplating amendments that would address new technologies and market practices and at the same time, reduce unnecessary regulatory burdens. The Commission specifically requested comments on whether to revise the Rule to more closely align Federal and State disclosure requirements governing franchise sales, and to address changes in the marketing of franchises, such as the sale of franchises internationally and through the Internet. Six public workshops were held in five cities during 1997 to promote discussions about the issues; allow the public to make statements on the record; and assist Commission staff in drafting a proposed amended Rule. On October 22, 1999, the Commission published a notice of proposed rulemaking (NPRM) with a text of the revised Rule. Comments were accepted until December 21, 1999, and rebuttal comments were accepted until January 31, 2000. Commission staff is now preparing a staff report.
enabling the FTC and DOJ to determine whether the proposed acquisition may, if consummated, violate the antitrust laws. These rules are continually reviewed in order to improve the program’s effectiveness and to reduce the paperwork burden on the business community. The Commission proposed modifications to the HSR Form on June 14, 1994. 59 FR 30545.

Changes requiring the use of the North American Industrial Classification System (NAICS) to replace the Standard Industrial Classification (SIC) codes in completing items 5—8 on the HSR Form became effective on July 1, 2001.

On February 1, 2001, the Commission published interim and proposed rules amending the Hart—Scott—Rodino Rules (HSR Rules) contained in 16 CFR parts 801, 802 and 803. The interim rules took effect upon publication and implemented statutory amendments to section 7A of the Clayton Act that had been enacted on December 21, 2000. The proposed rules set forth other changes improving and updating the HSR Rules.

Both the interim and proposed rules invited public comment. The Commission received seventeen public comments addressing the interim rules (66 FR 8679) and the proposed rules (66 FR 8723). The proposed rules were revised and changes to parts 801 and 802 were made final effective April 17, 2002 (67 FR 11898). Interim rule 802.21 was revised and made final in a separate rulemaking and made effective on February 2, 2002 (67 FR 11904). On January 17, 2003, the Commission responded to issues raised by the comments received on the interim rules and issued final amendments to parts 801 and 803 (68 FR 2425). The Commission also received a number of comments that were not relevant to the changes promulgated by either set of rules. These additional comments remain under consideration and may be addressed by future rulemaking.

In the fall of 2003, the Commission anticipates amending the HSR rules to allow parties to file the premerger notification and report form electronically via the Internet. The Commission also expects to issue a notice of proposed rulemaking during the spring or summer of 2004 to revise its treatment of non—corporate entities.

**Timetable:**

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**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** Marian Bruno, Assistant Director, Federal Trade Commission, Premerger Notification Office, Washington, DC 20580

Phone: 202 326—2846

Email: mbruno@ftc.gov

RIN: 3084—AA91

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**4174. PREMERGER NOTIFICATION RULES AND REPORT FORM**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 15 USC 18a Clayton Act

**CFR Citation:** 16 CFR 801 to 803

**Legal Deadline:** None

**Abstract:** The Premerger Notification Rules (Rules) and the Antitrust Improvements Act Notification and Report Form (HSR Form) were adopted pursuant to section 7A of the Clayton Act. Section 7A requires firms of a certain size contemplating mergers or acquisitions of a specified size to file a notification to the Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ) and to wait a designated period of time before consummating the transaction. It also requires the FTC, with the concurrence of the U.S. Assistant Attorney General for Antitrust, to promulgate rules requiring that notification be in a form and contain information necessary to
4175. TRADE REGULATION RULE ON FUNERAL INDUSTRY PRACTICES

Priority: Substantive, Nonsignificant

CFR Citation: 16 CFR 453

Timetable:

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Regulatory Flexibility Analysis

Required: No

Government Levels Affected: None

Agency Contact: Carole L. Danielson
Phone: 202 326—3115
Email: cdanielson@ftc.gov

RIN: 3084–AA82

Federal Trade Commission (FTC) Long-Term Actions

4176. TELEMARKETING SALES RULE

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 6101 to 6108

CFR Citation: 16 CFR 310

Legal Deadline: Other, Statutory, December 31, 2000, Other

Abstract: In 1995, the Commission issued the Telemarketing Sales Rule (TSR or Rule), 16 CFR part 310, under the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 USC 6101—6108. TSR requires telemarketers to disclose information; prohibits misrepresentations; limits the times telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services.

As required by the 1995 Act, the Commission reviewed the TSR to evaluate the Rule's operation and report to Congress. The Commission issued a request for public comment on the Rule, its overall costs, benefits and its regulatory and economic impact since its adoption in 1995. As part of the review, the Commission held a public forum on January 11, 2000, addressing the operation of the Rule's "do—not—call" provision. Another public forum to discuss other provisions of TSR was held on July 27—28, 2000.

On October 25, 2001, President Bush signed the USA PATRIOT Act, P.L. 107—56, into law, with provisions that have significant impact on TSR. Section 1101 of the 2001 Act amends the Telemarketing Act to extend the coverage of TSR to charitable fund raising conducted by for—profit telemarketers for, or on behalf of, charitable organizations.

On January 22, 2002, the Commission announced its proposal to amend the Rule and to publish a notice of proposed rulemaking (NPRM). Among other things, the proposed Rule would establish a centralized national "do not call" registry, would prohibit telemarketers from receiving or sharing a consumer's billing information with anyone else, and would prohibit telemarketers from blocking "Caller ID" information. In addition, as mandated by Sec. 1011 of the USA PATRIOT Act, also referred to as the Crimes Against Charitable Americans Act of 2001, 15 USC 6101, note, the Commission's proposal would add certain disclosures and other requirements applicable to for—profit telemarketers who solicit charitable donations. Staff held a three—day public workshop from June 5—7, 2002, to discuss these and other proposed changes to the Rule. On May 24, 2002, the Commission also issued a related NPRM proposing that user fees be imposed on telemarketers and their seller or telemarketer clients for access to the national "do not call" registry in order to establish and maintain the registry. See 67 FR 37362 (May 29, 2002). The Commission announced the final amended Rule on December 18, 2002. On October 1, 2003, affected parties must be in full compliance with (1) Sec. 310.4(b)(1)(iv)(the prohibition of abandoned calls); (2) Sec. 310.4(b)(4)(the safe harbor for call abandonment) as well as any record keeping requirements associated with the safe harbor; and (3) Sec. 310.4(b)(1)(iv)(B) (the national "do not call" registry provisions of the amended Rule). 68 FR 16414 (Apr. 4, 2003). Full compliance is required for Sec. 310.4(a)(7) (the caller identification provisions) on January 29, 2004; and March 31, 2003, was the date required for full compliance with all other provisions of the amended TSR.

As noted above, among other things, the final amended Rule establishes a national "do not call" registry, requires telemarketers to transmit Caller ID information, prohibits abandoned calls, prohibits unauthorized billing, requires express authorization when certain payment mechanisms are used, requires express informed consent in certain types of transactions, requires disclosures when the offer involves a negative option feature, and requires disclosures and prohibits misrepresentations in solicitations for charitable contributions. The amended Rule provides an exemption from the do—not—call registry for businesses with which consumers have an established business relationship. The Rule also exempts from the do—not call registry for—profit telemarketers making charitable solicitations.

The National Do Not Call Registry opened on June 27, 2003. Consumers can register for free in two ways: online at DONOTCALL.GOV or by telephone at 1 (888) 382—1222. As of October 1, 2003, it will be illegal for most telemarketers to call a number listed on the national registry.

On February 20, 2003, the Congress authorized the agency to collect fees sufficient to implement and enforce the "do not call" provisions of the TSR (P.L. 108—7). On April 3, 2003, the Commission issued a Revised Notice of
Proposed Rulemaking (Revised Fee NPRM) to amend the TSR by adding a new section that would impose fees on entities accessing the national “do not call” registry. 68 FR 16238 (Apr. 3, 2003). The Commission issued the Final Fee Rule on July 31, 2003. 68 FR 45134. The Final Rule will among other things: require only sellers to pay the annual fee for access to the national registry; impose an annual fee of $25 per area code, with a maximum annual fee of $7,375; allow access to up to five area codes for free; and, set October 1, 2003, as the effective date for the “do—not—call” provisions of the amended TSR.

Additional revisions to the amended TSR will allow more entities to access the “do not call” registry for the purpose of scrubbing their lists, even if they are entities that are exempt from the FTC’s jurisdiction. However, the FTC emphasizes strongly that the information in the national registry may be used for no purpose other than to stop unwanted telemarketing calls.

To comply with the amended TSR’s “do not call” provisions by the effective date of October 1, 2003, all covered sellers are required to access the registry for the first time between September 1 and September 30, 2003.

**Timetable:**

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<tr>
<th>Action</th>
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<tbody>
<tr>
<td>Announcement of Public Forum re: “Do—Not—Call” Provision</td>
<td>11/24/99</td>
<td>64 FR 66124</td>
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<tr>
<td>Public Forum re “Do—Not—Call” Provision Request for Comments</td>
<td>02/28/00</td>
<td>65 FR 10428</td>
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<td>Comment Period End</td>
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<tr>
<td>Extension of Comment Period</td>
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<td>65 FR 26161</td>
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<tr>
<td>Public Forum</td>
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<tr>
<td>USA Patriot Act Enacted</td>
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<td>67 FR 15767</td>
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4177. • APPLIANCE LABELING RULE

**Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 42 USC 6291 et seq

**CFR Citation:** 16 CFR 305

**Legal Deadline:** None

**Abstract:** The Commission issued the Rule concerning disclosures regarding energy consumption and water use of certain home appliances (Appliance Labeling Rule) in 1979, 44 FR 66466 (Nov. 19, 1979) in response to a directive in the Energy Policy and Conservation Act of 1975 (EPCA), 42 U.S.C. 6294. The rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an EnergyGuide label and in catalogs.

New energy conservation standards and a new DOE test procedure for clothes washers will become effective on January 1, 2004. Application of the new test procedure (the J1 test) will likely produce energy consumption figures different from those yielded by the old test procedure (the J test). Because these test results are used to determine energy use information that appears on the FTC EnergyGuide label, consumers may not be able effectively to compare the energy performance of clothes washers if the labels are based on two different test procedures.

To ease the transition to the new energy efficiency standard and new (J1) test procedure, the Association of Home Appliance Manufacturers (AHAM) wrote to FTC staff on February 7, 2003, requesting permission to begin using that test for labeling clothes washers during 2003, before the test becomes effective. In addition, AHAM’s letter requested that the Commission allow its members to provide special wording on the EnergyGuide labels for these models to help consumers in distinguishing washers tested under the new (J1) procedure from those tested under the old (J) procedure. AHAM proposed a modified label that would display a banner across the top stating: “This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice.” AHAM requested that the Commission allow its members to begin using the new (J1) test and modified labels on May 1, 2003, and that the labeling changes be made permanent.

To grant AHAM’s request, the Commission would have to grant an exemption from certain EnergyGuide testing and labeling requirements for the remainder of the calendar year of 2003 and issue rule amendments to make the requested labeling changes a permanent requirement for all manufacturers after January 1, 2004. On April 4, 2003, the Commission sought comments on AHAM’s proposals. 68 FR 16231. The Commission received four comments; three of which supported
the conditional exemption and rule change. In a Federal Register notice issued on June 18, 2003, the Commission granted a conditional exemption from certain EnergyGuide testing and labeling requirements for the remainder of the calendar year of 2003 to allow manufacturers to use the new (J1) test procedure immediately instead of waiting until the beginning of 2004. The Commission also amended the Rule to require explanatory language on EnergyGuide labels for all models beginning January 1, 2004. 68 FR 36458.

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<tr>
<th>Action</th>
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<tr>
<td>NPRM</td>
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<td>Final Rule and Conditional Exemption</td>
<td>06/18/03</td>
<td>68 FR 36458</td>
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</table>

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None


URL For Public Comments: www.ftc.gov/os/comments/appliancecomments/index.html

Agency Contact: Hampton Newsome, Attorney, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 601 New Jersey Avenue, NW, Washington, DC 20580 Phone: 202 326—3355 Email: hnewsome@ftc.gov

RIN: 3084-AA93

[FR Doc. 03–24018 Filed ; ] BILLING CODE 6750–01–S