



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

JUN 24 2008

The Honorable John F. Kerry
Chairman
Committee on Small Business & Entrepreneurship
United States Senate
428A Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Kerry:

This report is made in accordance with Section 212(a)(6) of the amended Small Business Regulatory Enforcement Fairness Act (SBREFA).

Since the Fair Minimum Wage Act of 2007 was enacted, the Federal Trade Commission (Commission or FTC) did not issue any rule subject to Section 212 of SBREFA.¹ Nevertheless, the FTC has continued to update its compliance guides. The Commission has published compliance guides for nearly all of its Rules affecting small businesses, including the Mail Order Rule, Franchise Rule, Funeral Rule, Telemarketing Sales Rule, Telephone Disclosure and Dispute Resolution ("900" Number) Rule, and Used Motor Vehicle Rule. Recently, the Commission amended the Franchise Rule, 16 C.F.R. § 436.² FTC staff updated the Amended Franchise Rule Compliance Guide, which included much more detail than a small entity compliance guide, and a consumer guide to buying a franchise to reflect changes in the rule. These materials are readily available at <http://www.ftc.gov/bcp/menus/resources/guidance/franchise.shtm>.

In the past year, the Commission has certified to the Small Business Administration that the final regulations issued and listed below will not have a significant economic impact on a substantial number of small business entities. Nonetheless, the Commission published a Final Regulatory Flexibility Act Analysis along with the final regulations. We are now diligently preparing a small entity compliance guide for each of these rulemakings even though not required to do so by SBREFA.

- **Fair and Accurate Credit Transactions Act of 2003 ("FACTA"), implemented in**

¹ Section 212 requires agencies to publish a "small entity compliance guide" for any new rule for which an agency is required to prepare a final regulatory flexibility analysis under section 3(a) of the Regulatory Flexibility Act, which is codified at 5 U.S.C. § 604.

² See 72 Fed. Reg. 15,444 (Mar. 30, 2007).

part at 16 C.F.R. Part 681: On November 9, 2007, the FTC and four banking agencies announced a final rule on identity theft red flags for which mandatory compliance by covered entities will be required by November 1, 2008. *See* 72 Fed. Reg. 63718. The rules implementing section 114 of FACTA require each financial institution or creditor to develop and implement a written Identity Theft Prevention Program (Program) to detect, prevent, and mitigate identity theft in connection with the opening of certain accounts or certain existing accounts. In addition, the Agencies issued joint rules under section 315 of FACTA that provide guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a consumer reporting agency sends the user a notice of address discrepancy.

The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM”), implemented at 16 C.F.R. Part 316: The FTC’s new rule provisions address four topics: (1) an e-mail recipient cannot be required to pay a fee, provide information other than his or her e-mail address and opt-out preferences, or take any steps other than sending a reply e-mail message or visiting a single Internet Web page to opt out of receiving future e-mail from a sender; (2) the definition of “sender” was modified to make it easier to determine which of the multiple parties advertising in a single e-mail message is responsible for complying with the Act’s opt-out requirements; (3) a “sender” of commercial e-mail can include an accurately-registered post office box or private mailbox established under United States Postal Service regulations to satisfy the Act’s requirement that a commercial e-mail display a “valid physical postal address;” and (4) a definition of the term “person” was added to clarify that CAN-SPAM’s obligations are not limited to natural persons.

- **The Appliance Labeling Rule, 16 C.F.R. Part 305:** The Federal Trade Commission concluded a two-year review of the Appliance Labeling Rule and, after substantial public comment and consumer research, amended the Rule to improve the design and content of the EnergyGuide label required on most new appliances sold in the United States. The yellow EnergyGuide label, familiar to most appliance shoppers, helps consumers compare the operating costs of competing models and helps them identify high-efficiency models that will reduce their energy use. We updated one consumer and business brochure relating to this (<http://www.ftc.gov/bcp/edu/pubs/consumer/homes/real4.pdf>); we have plans to update others in the near future.

If you have any further questions about this, please feel free to contact Christian S. White, the Deputy General Counsel for Legal Counsel and Small Business Coordinator at the Commission, at (202) 326-2476. For many years, the FTC has had a highly effective program providing compliance assistance to small businesses. We plan to continue to refine and improve these efforts.

Respectfully,

/signed/
William E. Kovacic
Chairman

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cc:

Chairwoman Nydia M. Velázquez
House Committee on Small Business
2361 Rayburn House Office Building
Washington, D.C. 20515



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