

FEDERAL TRADE COMMISSION (FTC)**Statement of Regulatory Priorities****I. REGULATORY PRIORITIES***Background*

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

The Commission is, first and foremost, a law enforcement agency. It pursues its mandate primarily through case-by-case enforcement of the Federal Trade Commission Act and other statutes. In addition, the Commission is also charged with the responsibility of issuing and enforcing regulations under a number of statutes. Pursuant to the FTC Act, for example, the Commission currently has in place sixteen trade regulation rules. The Commission also has adopted a number of voluntary industry guides. Most of the regulations and guides pertain to consumer protection matters and are generally intended to ensure that consumers

receive the information necessary to evaluate competing products and make informed purchasing decisions.

Industry Self-Regulation and Compliance Partnerships with Industry

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. The Commission has held workshops and issued reports that encourage industry self-regulation and compliance partnerships in several areas. As detailed below, information privacy and security, the evolving nature of technology, consumer credit and finance, and health care issues continue to be at the forefront of the Commission’s consumer protection and competition programs. By subject area, we discuss the major workshops and reports¹ the FTC has issued since the 2008 Regulatory Plan was published.

(a) *Protecting Personal Information.* The Commission convened a number of workshops in interrelated areas associated with protecting personal information, consumer privacy, and identity theft. They include:

- On November 13, 2008, the FTC and the Southern Methodist University Dedman School of Law co-hosted a workshop on how businesses can secure personal information and protect the privacy of consumers and employees. The workshop was presented in partnership with the International Association of Privacy Professionals which provides guidance to businesses on data security, privacy, and responses to data breaches.
- On March 16-17, 2009, the FTC, along with the Asia-Pacific Economic Cooperation forum and the Organization for Economic Cooperation and Development, co-hosted an international conference on how companies can manage personal data security issues in a global information environment where data can be stored and accessed from multiple jurisdictions.
- On April 29, 2009, the FTC held a workshop to help businesses implement data security practices to deter identity thieves and recognize telltale signs - or red flags - that

thieves are trying to use personal information they have obtained.

- Beginning December 7, 2009, the Commission will hold three roundtables to explore the privacy challenges posed by 21st century technology and business practices that collect and use company data. The goal of the roundtables is to determine how best to protect consumers while supporting beneficial uses of the information and technological innovation.

As an outgrowth of an April 2007 federal government strategic plan which contained 31 recommendations to address identity theft, the President’s Identity Task Force (co-chaired by the Attorney General and the FTC’s Chairman) released an October 2008 report on the progress made in implementing the recommendations.² The report discusses the FTC’s workshops, training seminars, and extensive outreach with public, private, and non-government organizations on preventing identity theft. Related to this, and following a December 2007 workshop on the use of Social Security numbers, the Commission issued a December 2008 report “Security in Numbers: Social Security and Identity Theft: A Federal Trade Commission Report Providing Recommendations on Social Security Number Use in the Private Sector.”³

As a result of a November 2007 town hall on issues related to online behavioral advertising - the practice of tracking an individual’s online activities in order to deliver advertising tailored to his or her interests - and how best to protect consumer privacy, the FTC staff put out for comment a set of four principles in December 2007. The principles were transparency and consumer control, reasonable security for consumer collected data, express consumer consent to material changes in privacy policy, express consumer consent to use of sensitive data. After considering the comments, the Commission issued a report in February 2009, “Self-Regulatory Principles for Online Behavioral Advertising,” which revised and retained the principles governing self-regulation by advertisers.⁴

² See “The President’s Identity Theft Task Force Report” at <http://www.ftc.gov/os/2008/10/081021taskforcereport.pdf>.

³ The complete report is at <http://www.ftc.gov/os/2008/12/P075414ssnreport.pdf>.

⁴ This can be found at <http://www.ftc.gov/os/2009/02/P085400behavareport.pdf>.

¹ The FTC also prepares a number of annual and periodic reports on the statutes it administers. These are not discussed in this plan.

(b) *Mobile Marketplace*. In May 2008, the Commission held a town hall meeting to assess the evolving mobile commerce marketplace and its implications for consumer protection policies. As a result of that meeting and based on further review, the FTC staff issued an April 2009 report "Beyond Voice: Mapping the Mobile Marketplace."⁵ The report found that cost disclosures about mobile services continue to generate consumer complaints and that the increased use of smartphones to access the mobile Web presented unique privacy concerns, especially regarding children. The report also highlighted the need to monitor the impact of unwanted mobile text messages, malware, and spyware and the substantial cost to carriers (and potentially consumers) of blocking them.

(c) *Debt Collection*. In October 2007, the Commission held a two-day workshop to explore how collection industry changes have affected consumers and businesses. In February 2009, in addition to its annual report on the Fair Debt Collection Practices Act (FDCPA), the FTC issued "Collecting Consumer Debts: The Challenges of Change."⁶ The report found that major problems in the flow of information in the collection chain and recommended that consumers be provided better information on debts and their rights. The report also recommended that debt collection laws should be modernized to reflect changes in technology and that Congress authorize the FTC to issue rules under the FDCPA.

The report further notes that the FTC lacked sufficient information on debt collection proceedings. On August 5-6, September 29-30, and December 4, 2009, the Commission has held or will hold roundtables examining consumer protection issues involving debt collections, both in litigation and arbitration proceedings.

(d) *Health Care*. On November 21, 2008, the Commission held roundtables on two distinct health care issues involving competition and consumer protection issues: competition between health care providers based on quality information, and competition which may be provided by an abbreviated regulatory approval for follow-on biologics (FOBs).

In June 2009, the Commission issued two reports on health care issues. The first, "Follow-On Biologic Drug Competition,"⁷ was a result of the November workshop. After discussing the differences between FOB drugs and branded-generic drugs and noting that competition by FOBs is unlikely to be similar to brand-generic competition (substantial FOB costs, limited competition, lack of automatic substitution, FOB difficulty gaining market share), the report concludes that patent protection and market-based pricing will promote competition by FOBs and recommends legislation to put in place an abbreviated FDA approval process for FOBs. The second report, "Authorized Generics: An Interim Report,"⁸ analyzes price reductions when authorized generic (AG) drugs compete with first-to-file generics during 180-day exclusivity and the impact of brand-generic patent litigation settlements that contain provisions on launching an AG drug. The FTC's report was prepared in response to requests from Congress and is relevant to health care reform initiatives.

(e) *Competition*. On February 17-19 and May 20-21, 2009, the Commission hosted public workshops on resale price maintenance under the Sherman Act and the FTC Act, focusing on how best to distinguish resale price maintenance that benefits consumers from that which does not. The workshops discussed theories of economic benefits and harms, featured panel presentations, and allowed for audience questions. On October 17, 2008, the FTC held a workshop on the scope of "unfair methods of competition" in section 5 of the FTC Act. The Commission considered the history of the provision, FTC and court interpretations, contemporary business conduct, and issues concerning standard-setting organizations.

In addition, beginning December 3, 2009, and ending January 26, 2010, the Commission and the Department of Justice will hold a series of five joint public workshops to explore updating the guidelines used to evaluate the potential competitive effects of mergers and acquisitions. The purpose of the review is to consider guideline revisions to more accurately reflect agency practice and result in a more efficient

review process. The agencies have requested comments on twenty questions related to competitive effects; market definition, share, and concentration; and the price and non-price effects of mergers.

(f) *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 recent 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.** On May 4-5, 2009, in conjunction with the Berkeley Center for Law and Technology and the Berkeley Center for Competition Policy, the Commission considered 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.

In addition to these five IP hearings, the Commission and the Technology Law and Public Policy Clinic at the University of Washington School of Law hosted a "Digital Rights Management" (DRM) conference on March 25, 2009. The conference addressed the use of DRM technologies, practices which are expected to become more prevalent in U.S. markets.

⁵ This is located at www.ftc.gov/reports/mobilemarketplace/mobilemktgfinal.pdf.

⁶ This is at <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>.

⁷ The link is <http://www.ftc.gov/os/2009/06/P083901biologicsreport.pdf>.

⁸ The link is www.ftc.gov/os/2009/06/P062105authorizedgenericsreport.pdf.

(g) *Journalism and the Internet.* On December 1-2, 2009, the FTC will host a two-day workshop titled "From Town Criers to Bloggers: How Will Journalism Survive the Internet Age?" 74 FR 51605 (Oct. 7, 2009). The workshop will broadly consider 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. Witnesses will include journalists and representatives of news organizations, new media representatives, direct marketers, academics, and consumer advocates.

(h) *Other Workshops.* 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. On March 12, 2009, the FTC staff conducted a forum to gather information for an upcoming education campaign involving advertising and marketing to children.

Then-Chairman William E. Kovacic also issued a report that considered basic questions and future directions as the Commission approaches its 100-year anniversary in 2014.⁹ The report was based on seven months of agency self-assessment and numerous consultations with officials in the public and private sector, and concluded, "The progress of the Federal Trade Commission in its modern era has built heavily upon the willingness of its people to assess their work critically and explore possibilities for improvement. Critical self-study and external consultations not only have helped identify paths to achieving greatness, but also have renewed the institution's commitment to fulfill the destiny that Congress in 1914 wished it to achieve." The report, the latest element of that tradition, seeks to ingrain in the agency a habit of periodic self-assessment to illuminate the way to future improvements.

In other areas, like the entertainment industry, the Commission has encouraged 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 say are inappropriate for children or warrant parental caution due to their violent content. The motion picture, electronic game and music industries have each established self-regulatory systems that rate or label products in an effort to help parents seeking to limit their children's exposure to violent materials. Since 1999, the Commission has issued six reports on these three industries, examining the industries' compliance with their own voluntary marketing guidelines.¹⁰

Staff is currently working on the development of a mall intercept study of parental awareness and use of rating information on movie DVDs and on a telephone survey on parental awareness and attitudes toward the marketing and sale of Unrated "Director's Cut" DVDs. The results of this research will be reported in the Commission's seventh media violence report, with an anticipated release in the Fall of 2009.

Regarding advertising for alcoholic products, the Commission plans to issue each year orders requiring two to four suppliers to provide information about advertising and marketing practices and compliance with self-regulatory guidelines. In June 2009, the Commission issued orders pursuant to FTC Act Section 6(b) to three alcohol companies, asking for information about advertising and marketing practices. In the coming year, FTC will review the companies' responses to the orders in light of the provisions of the alcohol industry self-regulatory codes. The FTC will continue to monitor advertising and marketing efforts by other industry members. It will also continue to promote the "We Don't Serve Teens" consumer education program, supporting the legal drinking age.¹¹

The Commission will continue to examine issues related to food marketing to youth. In July 2008, the Commission published a report to Congress on this topic¹² based on the responses of 44 members of the food

and beverage industry to Special Orders issued by the Commission in 2007 under Section 6(b) of the FTC Act. The Commission's report found that, in 2006, the surveyed companies spent more than \$1.6 billion in youth-directed marketing, often employing a variety of integrated techniques such as traditional media, digital- and Internet-based platforms, packaging and in-store marketing, and cross-promotions with media and entertainment companies including the use of licensed characters. Among the report recommendations were that food companies adopt meaningful nutrition-based standards for marketing products to children and that companies define "marketing to children" to encompass the full spectrum of advertising and promotional techniques. After receipt of 2009 data from the companies during 2010, the Commission intends to conduct a follow-up study to assess the extent to which recommendations from the 2008 report have been implemented and whether additional measures are needed.

The Commission is also spearheading an Interagency Working Group on Food Marketed to Children, made up 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. Findings and recommendations will be submitted in a report to Congress by July 2010.

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, 160 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

⁹ See Chairman William E. Kovacic, "The Federal Trade Commission at 100: Into Our 2nd Century - The Continuing Pursuit of Better Practices, A Report by Federal Trade Commission" (January 2009), available at <http://www.ftc.gov/os/2009/01/ftc100rpt.pdf>.

¹⁰ For the most recent report, see "Federal Trade Commission, Marketing Violent Entertainment to Children: A Fifth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries A Report to Congress" (April 2007), available at www.ftc.gov/reports/violence/070412MarketingViolentEChildren.pdf.

¹¹ More information can be found at <http://www.dontserve teens.gov/>.

¹² See "Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation" (July 2008), available at <http://www.ftc.gov/os/2008/07/P064504foodmktngreport.pdf>.

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 300 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, twenty-one companies have agreed to participate in the program.

Rulemakings that Have International Effects

The OMB has requested that agencies discuss the international effects of their rulemakings in the regulatory plan narrative per the recommendation of the OMB Secretariat General of the European Commission joint report to the U.S.-European Union (EU) High Level Regulatory Cooperation Forum

And Transatlantic Economic Council (TEC).¹³ The Commission has statutory authority and implementing regulatory authority to prevent unfair or deceptive acts or practices in commerce among the states or with foreign nations. The Commission's Rules apply to foreign-based corporations doing business in the United States. As explained below, to the extent that foreign companies do business in the United States or their conduct from outside causes or is likely to cause reasonably foreseeable injury within the United States, these foreign

entities are required to comply with the applicable statutes and rules.

The Commission enforces Section 5(a) of the FTC Act, which provides that "unfair or deceptive acts or practices in or affecting commerce ... are ... declared unlawful." Recently, the "Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006" (or the "U.S. SAFE WEB Act of 2006" or "SAFE WEB") (Pub. L. No. 109-455, codified to the FTC Act, 15 U.S.C. § 41 *et seq.*) amended Sec. 5(a)'s "unfair or deceptive acts or practices" to include such acts or practices involving foreign commerce that cause or are likely to cause reasonably foreseeable injury within the United States or involve material conduct occurring within the United States. This amendment expressly confirmed the FTC's authority to redress harm in the United States caused by foreign actors and harm abroad caused by U.S. actors. This also clarified the factors for Commission consideration in establishing Trade Regulation Rules to remedy unfair or deceptive acts or practices that occur on an industry-wide basis. Under Section 18 of the FTC Act, the Commission is authorized to prescribe "rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce" within the meaning of Section 5(a)(1) of the Act.

Turning to specific rules and rulemakings and their international effects or of potential international interest, the Premerger Notification Rules, 16 CFR 801-803, for example, apply to mergers or acquisitions reaching a certain size threshold and where one or both parties are of a certain size. In addition, the Energy Independence and Security Act of 2007 provided the Commission with authority to promulgate a rule addressing manipulation of wholesale prices for petroleum products and authorizes rule provisions prohibiting persons from supplying misleading or deceptive information or data to certain entities. As discussed within *Final Actions* below, the Commission announced a final rule on August 6, 2009.

For the Commission's consumer protection mission, some of the rules currently being reviewed may have effects on international companies doing business in the United States or on U.S. businesses regarding their dealings with foreigners. These include, among other things, the provisions of the recently promulgated Health Breach Notification Rule, 16 CFR 318, which

applies to foreign vendors of personal health records and related entities. Other rules that are pending or under review and that may have an effect on international commerce include: the Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986, 16 CFR 307; Trade Regulation Rules adopted pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (900 Number Rule), 16 CFR 308; Telemarketing Sales Act, which prohibit calls to persons listed on the Do-Not-Call list, 16 CFR 310; the rulemakings on Mortgage Acts and Practices and Mortgage Assistance Relief Services, to be codified at 16 CFR 321, 322; Power Output Claims for Amplifiers Used in Home Entertainment Systems, 16 CFR 432; and the Trade Regulation Rule on Mail or Telephone Order Merchandise, which covers purchases on the Internet, 16 CFR 435.

In addition, many of the FTC Guides also apply to foreign entities doing business in the United States or are of interest to such foreign entities. These include among others: Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR 23; the Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. 255; Guides Concerning Fuel Economy Advertising for New Automobiles, 16 CFR 259; and the Guides for the Use of Environmental Marketing Claims, 16 CFR 260. The FTC also issued and applies an Enforcement Statement on the use of Made in USA and other U.S. origin claims in advertising and labeling.¹⁴ The principles set forth in this enforcement policy statement apply to U.S. origin claims included in labeling, advertising, other promotional materials, and all other forms of marketing, including marketing through digital or electronic means such as the Internet or electronic mail.¹⁵

Rulemakings and Studies Required by Statute

The Congress has enacted laws requiring the Commission to undertake rulemakings and studies. They include at least 15 new rulemakings and eight studies required by the Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159 (FACTA or the FACT Act) and the related Credit

¹³ See "Review of the Application of EU and US Regulatory Impact Assessment Guidelines on the Analysis of Impacts on International Trade and Investment" (May 2008), available at http://www.whitehouse.gov/omb/assets/regulatory_matters_pdf/sg_omb_final.pdf.

¹⁴ See

<http://www.ftc.gov/os/statutes/usajump.shtml>.

¹⁵ The Made in USA Enforcement Statement does not cover products specifically subject to the country-of-origin labeling requirements of the Textile Fiber Products Identification Act, the Wool Products Labeling Act, the Fur Products Labeling Act, or the American Automobile Labeling Act.

Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24 (CARD Act); the rulemaking pursuant to the Federal Deposit Insurance Corporation Improvements Act of 1991, Pub. L. No. 102-242 (FDICIA); model privacy notices under the Gramm-Leach-Bliley Act; the rulemakings concerning gasoline price manipulation and energy labeling for lamps required or authorized by the Energy Security and Independence Act of 2007, Pub. L. No. 110-140; temporary breach notification requirements for vendors of personal health records under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5; and a rulemaking on mortgage loans pursuant to the Omnibus Appropriations Act of 2009, Pub. L. No. 111-8. The *Final Actions* section below describes actions taken on the required rulemakings and studies since the 2008 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. **Credit Bureau Charge for Credit Scores**—The Commission was required to determine a fair and reasonable fee to be charged by a consumer reporting agency for providing the credit score information required under FACTA. On November 8, 2004, the Commission issued an NPRM on reasonable fees for credit scores. 69 FR 64698. The comment period ended on January 5, 2005. Staff reviewed the comments and is monitoring the credit score market, where prices have continued to remain reasonable and competitive.
2. **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 anticipate issuing a final rule in December 2009.
3. **Furnisher Rules**—On July 1, 2009, the Agencies issued furnisher accuracy and dispute rules which are discussed

under *Completed Actions* below. On the same date, the Agencies also 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.

4. **Advertising Disclosure Rule for Free Credit Reports**—Section 205 of the CARD Act requires the Commission to issue a rule to prevent deceptive marketing of “free credit reports.” On October 7, 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 which interfere with consumers’ ability to obtain file disclosures from consumer reporting agencies. 74 FR 52915 (Oct. 15, 2009). Comments on the NPRM are due on November 30, 2009.

FACTA Study on Insurance Scores. On March 27, 2009, the Commission issued Amended Orders to File a Special Report amending the compulsory process resolution dated May 16, 2008 titled “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 homeowners insurance on or about April 6, 2009; it is anticipated the insurers will have fully complied with the Amended Orders by the middle of September, 2009. Staff has begun reviewing the data produced by the insurers and is working to identify a sample set of data to be used for the study.

FACTA Study on Credit Reports. Pending approval from the Office of Management and Budget, the FTC plans to conduct a national study of the accuracy of consumer reports in connection with Section 319 of the FACT Act. 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 required 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 also required the Commission to issue a series of biennial reports to Congress over a period of eleven years from the date of enactment (2003).

FDICIA Rule. The FDICIA assigns 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 1993-2003, 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 subsequent yearly appropriations have not imposed the same funding prohibition and the Commission issued an NPRM on March 16, 2005, 70 FR 12823, and a revised NPRM on March 14, 2009. 74 FR 10843. Staff is reviewing the comments on the revised NPRM and expects to forward a recommendation to the Commission by the end of 2009.

Gramm-Leach-Bliley (GLB) Rule. Please see Final Actions for information about a final GLB Rule.

Energy Security and Independence Act Rules. Several sections of the Energy Security and Independence Act of 2007 (ESIA), require or authorize, among other things, that the Commission promulgate rules concerning gas price manipulation and labeling requirements for various categories of biodiesel fuels, as well as energy labeling requirements for certain appliances including light bulbs.¹⁶ The active rulemakings under ESIA are discussed below and, for the Market Manipulation Rulemaking, in the *Final Actions* section.¹⁷

Section 321 of the ESIA requires the Commission to conduct a rulemaking to consider the effectiveness of current energy labeling for lamps (commonly referred to as “light bulbs”) and to consider alternative labeling approaches. In response to that

¹⁶ The rulemaking concerning labeling for biofuels was completed in 2008.

¹⁷ In addition, this act provides the Commission with authority to promulgate energy labeling rules for consumer electronics; and the Commission issued an ANPRM in May 2009. See *Ongoing Reviews* below.

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. As part of this effort, the Commission held a public roundtable meeting on September 15, 2008; and the comment period ended on September 29, 2008. The Commission announced an NPRM on October 27, 2009, seeking comments about proposed labeling requirements for light bulbs. 74 FR 57950 (Nov. 10, 2009). Comments are due by December 28, 2009. The Commission will take final action before June 2010.

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 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 (practices of entities providing assistance to consumers in modifying mortgage loans or avoiding foreclosure), 74 FR 26130. The comment periods for the ANPRMs have closed. Staff is reviewing the comments and expects to send a recommendation to the Commission by fall 2009 relating to further proposed actions.

Please see *Final Actions* below for information about the statutorily required *Temporary Breach Notification Rule*.

Ten-Year Review Program

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 USC 601-612. Under the Commission's program, rules have been reviewed on a ten-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 USC 610. 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, Pub. L. 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 (Sept. 30, 1993).

As part of its continuing ten-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.

Calendar Year 2008-09 Reviews

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. On February 5, 2009, the Commission published its modified ten-year schedule of review and announced that it would initiate the review of two rules and one guide during 2009: (1) the Automotive Fuel Ratings, Certification, and Posting Rule (Fuel Ratings Rule), 16 CFR 306, (2) the Rule Concerning Prenotification Negative Option Plans (Negative Option Rule), 16 CFR 425, and (3) the Guides for Private Vocational and Distance Education Schools (Vocational School Guides), 16 CFR 254. 74 FR 6129 (Feb. 5, 2009). Discussion of these three reviews follows.

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. Staff anticipates that the Commission will issue an NPRM during December 2009.

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, 2009, 74 FR 22720, and the comment period ended on July 27, 2009. Several states, a county government agency, and an industry trade association filed requests seeking to extend the comment period but the requests were so close to the end of the comment period we could not extend the period. On August 7, 2009, the Commission granted the requests to reopen and extended the comment period until October 13, 2009.

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 (July 30, 2009). Issued in 1972 and most recently amended in 1998 to add a provision addressing misrepresentations related to post-graduation employment, the guides advise businesses offering vocational training courses – either on the school's premises or through distance education, such as correspondence courses or the Internet – how to avoid unfair and deceptive practices in the advertising, marketing, or sale of their courses. The comment period closed on October 16, 2009.

Ongoing Reviews

Since the publication of the 2008 Regulatory Plan, the Commission has initiated two rulemaking proceedings and is continuing review of a number of rules and guides. The two new rulemaking proceedings are discussed first under (a) *Rules*, followed by the other rule reviews and then (b) *Guides*.

(a) Rules

Consumer Electronics Rule. The Commission has authority under section 325 of the ESIA to promulgate energy labeling rules for consumer electronics (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 of labels; and appropriate test procedures. 74 FR 11045. The comment period ended on May 14, 2009. Staff is currently reviewing the comments and anticipates sending a recommendation to the Commission by the end of 2009.

Debt Relief Services TSR Rule. On July 30, 2009, the Commission approved an NPRM seeking comments on a proposal to amend the Telemarketing Sales Rule (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 (Debt Relief Services TSR Rule) 74 FR 41988 (Aug. 19, 2009). The proposed amendments would define "debt relief services," to ensure that telemarketing transactions involving these services would be subject to the TSR, mandate certain disclosures, and prohibit misrepresentations and the request or receipt of payment for these services until services have been performed and documented. The comment period was initially set to close on October 9, 2009, but was extended to October 26, 2009. Staff held a public forum on November 4, 2009, which afforded Commission staff and interested parties an opportunity to discuss the proposed amendments as well as any issues raised in comments in response thereto.

Mail Order Rule. The Mail or Telephone Order Merchandise Rule (or 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 (Sept. 11, 2007). Staff has reviewed the comments and anticipates sending a recommendation to the Commission by early 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 and another part addressing business opportunity issues. 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. The Commission plans to issue a staff report on the Business Opportunity Rule in early 2010 and seek comment on the report.

Hart-Scott-Rodino Rules. For the Hart-Scott-Rodino Premerger Notification Rules (HSR Rules), 16 CFR 801-803, Bureau of Competition staff is continuing to review various HSR Rule provisions. Staff is also reviewing the HSR Form and anticipates sending a recommendation to the Commission in January 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 (July 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 ended on September 19, 2008, and staff anticipates sending its recommendation to the Commission during fall 2009.

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, and staff anticipates sending a recommendation to the Commission by fall 2009.

Cooling-Off Rule. The Cooling-Off Rule requires that a consumer be given a three-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 (July 27, 2009). Staff is reviewing the comments and expects to prepare a recommendation for the Commission during the early part of 2010.

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, is ongoing. The Smokeless Tobacco Regulations govern the format and display of statutorily-mandated health warnings on all packages and advertisements for smokeless tobacco. Staff anticipates Commission action

regarding review of this rule by early 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 anticipates forwarding its recommendation to the Commission by December 2010.

(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 72328. 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. The deadline for comments was June 16, 2009. Staff is reviewing the comments and expects to make a recommendation by the end of 2009.

Jewelry, Precious Metals and Pewter Guides. After issuing a staff advisory opinion indicating that the Commission's current Guides for Jewelry, Precious Metals and Pewter Industries, 16 CFR 23, did 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 (ppt) pure platinum and no other platinum group metals. 70 FR 38834 (July 6, 2005). After reviewing the comments, the Commission issued a notice seeking comment on proposals to amend the platinum section of the Guides to address the new platinum alloys. 73 FR 10190 (Feb. 26, 2008). The extended comment period ended August 25, 2008. Staff expects that the Commission will amend the Guides during late 2009 to provide that marketers may non-deceptively mark and describe an alloy of platinum and non-precious metals consisting of at least 500 parts per thousand (ppt), but less than 850 ppt, pure platinum and less than 950 ppt total platinum group metals (PGM) as "platinum," provided they make certain disclosures.

Green Guides. The Commission previously announced that it would review the Green Guides, 16 CFR 260. 73 FR 66091 (Nov. 27, 2007). The Green Guides 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. 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 (April 30, 2008); and 3) developments in green building and textiles claims and consumer perception of such claims (July 15, 2008). Staff is reviewing the comments the Commission has received and is conducting consumer research.

FCRA Commentary. Finally, the Commission anticipates issuing a notice requesting comments on the Statement of General Policy or Interpretations under the Fair Credit Reporting Act (also known as FCRA Commentary) by the middle of 2010.

Final Actions

Since the publication of the 2008 Regulatory Plan, the Commission has issued the following final rules:

Call Abandonment TSR Amendments. The Commission issued a final rule implementing proposed Call Abandonment amendments to the TSR.

73 FR 51164 (Aug. 29, 2008). The amendments expressly prohibited telemarketing sales calls that deliver prerecorded messages, whether answered in person by a consumer or by an answering machine or voicemail service, unless the seller has previously obtained the recipient's signed, written agreement to receive such calls. The amendments also changed the method for measuring the maximum allowable call abandonment rate in the call abandonment safe harbor provision from "3 percent per day per calling campaign" to "3 percent per 30-day period per calling campaign." The Commission also ended its temporary policy during the rulemaking of forbearing from bringing enforcement actions against sellers and telemarketers who placed prerecorded calls that meet certain specified conditions that would be inconsistent with the new requirements. There was a phase-in of various effective dates, with the last one being the provision requiring permission from consumers to receive such calls, which became effective September 1, 2009.

Market Manipulation Rule. Section 811 of the ESIA prohibits any manipulative or deceptive device or contrivance in connection with the wholesale purchase, or sale of crude oil, gasoline, or other petroleum distillate in contravention of rules or regulations the Commission may prescribe (Market Manipulation Rule). Section 813 specifies the methods of enforcing such a rule. The Commission announced an ANPRM requesting comments on the manner in which it should carry out its responsibilities to promulgate regulations under these sections. 73 FR 25614 (May 7, 2008). After considering the comments, the Commission issued an NPRM on August 19, 2008, 73 FR 53393, and held a workshop on November 6, 2008. The Commission issued a revised NPRM on April 22, 2009, 74 FR 18304; and the comment period on the revised NPRM ended on May 20, 2009. On August 6, 2009, the Commission announced a final rule that prohibits fraud or deceit in wholesale markets for petroleum products, and intentional omissions of material information that are likely to distort market conditions for any such product. 74 FR 40686 (Aug. 12, 2009). The rule was effective on November 4, 2009. On November 13, 2009, the FTC issued its Compliance Guide for these Petroleum Market Manipulation Regulations. The Guide answers commonly asked questions and examines various scenarios to help those trading in wholesale petroleum markets comply

with the regulations. The Guide is available on the FTC's Web site at: www.ftc.gov/ftc/oilgas/rules.htm.

Health Breach Notification Rule.

Section 13407 of the American Recovery and Reinvestment Act of 2009 required the Commission to issue rules requiring vendors of personal health records and third parties that offer products or services through the web sites of vendors to notify individuals when the security of their individually identifiable health information is breached. The Commission published an NPRM on April 20, 2009 (74 FR 17914), seeking comments. The Commission announced the final rule on August 17, 2009. 74 FR 42962 (Aug. 25, 2009).

FACTA Furnisher Rule. The Commission also published one final rule mandated by FACTA, the Furnisher Rule. The Commission is required, in coordination with the banking agencies and National Credit Union Administration, to issue guidelines and rules concerning the accuracy of information furnished to consumer reporting agencies, and rules relating to the ability of consumers to dispute information directly with furnishers of information. The Commission and the other agencies published final rules on July 1, 2009. 74 FR 31484.

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 proposed revisions address consumer endorsements, expert endorsements, endorsement by organizations, and disclosure of material connections between advertisers and endorsers. On the issue of consumer endorsements, the proposed revisions explain that when ads using consumer testimonials convey that the endorser's experience is representative of what consumers will generally achieve and the advertiser

does not possess adequate substantiation for this representation, the advertiser should clearly and conspicuously disclose the results consumers actually can expect to achieve. 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 it would retain a revised version of the guides, effective on December 1, 2009. 74 FR 53124 (Oct. 15, 2009).

Gramm-Leach-Bliley Rule. Pursuant to Section 728 of the Financial Services Relief Act of 2006, P. L. No. 109-351, which added section 503(e) to the Gramm-Leach-Bliley Act (or GLB Act), the Commission together with seven other federal agencies¹⁸ is 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 17, 2009, the Agencies announced a model privacy form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rules. In addition, the Agencies other than the SEC are eliminating the safe harbor permitted for notices based on the Sample Clauses currently contained in the privacy rules if the notice is provided after December 31, 2010.

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 and reduce the regulatory burdens on businesses. The Commission will continue working toward these goals. The Commission's ten-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 ten-year program also is consistent with section 5(a) of E.O. 12866, which directs executive branch agencies to develop a plan to reevaluate periodically all of their significant existing regulations. 58 FR 51735 (Sept. 30, 1993). In addition, the final rules issued by the Commission continue to be consistent with the President's Statement of Regulatory Philosophy and Principles, Executive Order 12866, section 1(a), which directs agencies to promulgate only such regulations as are, *inter alia*, required by law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public.

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

II. REGULATORY ACTIONS

The Commission has one proposed rule that would be a "significant regulatory action" under the definition in Executive Order 12866.¹⁹ This is the FACTA Risk Based Pricing Final Rule, which staff anticipates being approved by the Commission during early 2010. There is further information about this under the prior heading of Rulemakings and Studies Required by Statute.

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¹⁹ Section 3(f) of the Executive Order defines a regulatory action to be "significant" if it is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

¹⁸ The agencies are the Board of Governors of the Federal Reserve System, 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.