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**Monday,
December 13, 2004**

Part LVII

**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.

SUMMARY: The following agenda of Commission proceedings is published in accordance with section 22(d)(1) of the Federal Trade Commission Act, 15 U.S.C. 57b-3(d)(1), and the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, title II of Pub. L. 104-121, 110 Stat. 847. The Commission's agenda follows guidelines and procedures issued August 18, 2004, by the Office of Management and Budget in accordance with the provisions of Executive Order No. 12866, "Regulatory Planning and Review" of September 30, 1993, 58 FR 51735 (Oct. 4, 1993), as amended by Executive Order No. 13258 of February 26, 2002, 67 FR 9385 (Feb. 28, 2002). This edition of the Unified Agenda of Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Federal Trade Commission's Statement of Regulatory Priorities is included in part II.

The Commission has responded to the optional information requirement to identify rulemakings that are likely to have some impact on small entities but are not subject to the requirements of the RFA. The current rulemakings that are likely to have some impact on small entities include: (1) the Smokeless Tobacco Rules, 16 CFR part 307; (2) the Pay-Per-Call Rule, 16 CFR part 308; (3) the Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles, 16 CFR part 309; (4) the Telemarketing Sales Rule, 16 CFR part 310; (5) Privacy of Consumer

Information, 16 CFR part 313; (6) Contact Lens Rule, 16 CFR part 315; (7) Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM) Rules, 16 CFR part 316; (8) the Franchise and Business Opportunities Rule, 16 CFR part 436; (9) the Funeral Rule, 16 CFR part 453; (10) the Rule on Labeling and Advertising of Home Insulation, 16 CFR part 460; and (11) certain rules adopted pursuant to the Fair and Accurate Credit Transactions Act of 2003, 16 CFR parts 602, 603, 604, 610, 611, 613, 614, 682.

In addition, the agency has responded to the optional information question that corresponds to Executive Order 13132, "Federalism," of August 4, 1999, 64 FR 43255 (Aug. 10, 1999), which does not apply to independent regulatory agencies. The Commission believes to the extent that any of the rules in this agenda may have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government" within the meaning of E.O. 13132, it has consulted with the affected entities. 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.

Additionally, the Commission's submission references the web site in the rule abstracts where appropriate. This is the Governmentwide web site where members of the public can find, review, and submit comments on Federal rulemakings that are open for comment and published in the **Federal Register**, the Government's legal newspaper.

Some of the rulemakings listed on 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 contact person 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

Sequence Number	Title	Regulation Identifier Number
4075	Regulatory Review	3084-AA47
4076	Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986	3084-AA48
4077	Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992	3084-AA78
4078	Trade Regulation Rule on Funeral Industry Practices	3084-AA82
4079	Privacy of Consumer Financial Information	3084-AA97

FTC

Federal Trade Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
4080	Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation	3084-AA60
4081	Trade Regulation Rule on Franchising and Business Opportunity Ventures	3084-AA63
4082	Premerger Notification Rules and Report Form	3084-AA91
4083	Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM) Rules	3084-AA96
4084	FDICIA	3084-AA99

Federal Trade Commission—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
4085	Fair and Accurate Credit Transactions Act of 2003	3084-AA94

Federal Trade Commission—Completed Actions

Sequence Number	Title	Regulation Identifier Number
4086	Labeling Requirements for Alternative Fuels and Alternative-Fueled Vehicles	3084-AA89
4087	Contact Lens Rule	3084-AA95
4088	Telemarketing Sales Rule	3084-AA98

Federal Trade Commission (FTC)

Prerule Stage

4075. 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 continues 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. 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. On January 27, 2004, the Commission published a revised timetable for its regulatory review program deferring all reviews by one year because of ongoing review proceedings as well as the addition of

at least 25 rulemakings required by new legislation. The Commission plans to publish a notice concerning the rules and guides it plans to review in early 2005.

Timetable:

Action	Date	FR Cite
Notice of Rules and Guides To Review in 2000	01/19/00	65 FR 2912
Notice of Rules and Guides To Review in 2002	03/04/02	67 FR 9630
Notice of Rules and Guides To Review in 2003	01/17/03	68 FR 2465
Notice of Rules and Guides To Review in 2004	01/27/04	69 FR 3867
Notice of Rules and Guides To Review in 2005	01/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Neil Blickman, Attorney, Federal Trade Commission,

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RIN: 3084-AA47

4076. 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 at 51 FR 40005. In FY 2000,

FTC

Prerule Stage

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 next spring.

Timetable:

Action	Date	FR Cite
Recommendation to the Commission Regarding ANPRM (Regulatory Review)	01/27/00	
ANPRM (Regulatory Review)	03/07/00	65 FR 11944
Comment Period End (Regulatory Review)	04/24/00	
Comment Period Extended (Regulatory Review)	05/08/00	65 FR 26534
Extended Comment Period End (Regulatory Review)	07/21/00	
Reopening and Extension of Comment Period	10/13/00	65 FR 60899
Extended Comment Period End	10/16/00	
Recommendation to Commission (Regulatory Review)	04/00/05	

Regulatory Flexibility Analysis

Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084-AA48

4077. 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 became effective on November 1, 1993 58 FR 44769 (Aug. 25, 1993) (parts of rule became effective Sept. 24, 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 and 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. It also 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 62 FR 11750. 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 audiotext 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 never authorized, ordered, received, or

used, a practice known as "cramming." 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 63 FR 58524. 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, 64 FR 61 (Jan. 4, 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 a recommendation to the Commission by early 2005.

Timetable:

Action	Date	FR Cite
Request for Comments	03/12/97	62 FR 11750
Comment Period End	05/12/97	
Public Workshop	06/19/97	
Public Workshop	06/20/97	
Recommendation to Commission	09/08/98	
NPRM	10/30/98	63 FR 58524
Comment Period Extended	01/04/99	64 FR 61
Comment Period End	01/08/99	
Public Workshop-Conference	02/25/99	
Extended Comment Period End	03/10/99	
Public Workshop	05/20/99	
Public Workshop	05/21/99	
Recommendation to Commission	04/00/05	

Regulatory Flexibility Analysis

Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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FTC

Prerule Stage

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RIN: 3084-AA78

4078. TRADE REGULATION RULE ON FUNERAL INDUSTRY PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 45; 15 USC 46(g); 15 USC 57(a)

CFR Citation: 16 CFR 453

Legal Deadline: None

Abstract: The Funeral Industry Practices Rule (Funeral Rule or Rule), which became effective in 1984, requires sellers of funeral goods and services to give price lists to consumers who visit a funeral home, and to disclose price and other information to callers who request it over the telephone. The Rule enables consumers to select and purchase only the goods and services they want, and requires funeral providers to seek authority before performing some services such as embalming. The Rule also requires funeral providers to make disclosures regarding any required purchases and prohibits misrepresentations regarding requirements and other aspects of funeral goods and services. In its 1994 review of the Rule, the Commission decided to retain the Rule, amended it to prohibit funeral providers from charging a "casket handling fee" in addition to any non-declinable basic-services fee and deleted certain affirmative telephone disclosure requirements. The Commission responded to requests to address emerging issues in the funeral industry by beginning a review of the Rule in 1998 rather than in 1999 as originally planned under its ten-year schedule for reviewing all Commission rules and guides. The Commission published a notice soliciting public comment in May 1999. Commission staff conducted a public workshop conference on November 18, 1999, to discuss and explore openly issues raised in written comments. Staff is evaluating the comments and preparing a recommendation to the Commission.

Timetable:

Action	Date	FR Cite
Initial Notice Requesting Public Comment	05/05/99	64 FR 24250
Extension of Comment Period	07/02/99	64 FR 35965
Close of Comment Period (Extended)	08/11/99	64 FR 35965
Public Workshop	11/18/99	64 FR 56717
Recommendation to Commission	03/00/05	
Commission Action	07/00/05	

Regulatory Flexibility Analysis

Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084-AA82

4079. PRIVACY OF CONSUMER FINANCIAL INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 6801 et seq

CFR Citation: 16 CFR 313

Legal Deadline: None

Abstract: This rulemaking is related to RIN 3084-AA85. In 2000, the Commission and banking agencies published rules for the Gramm-Leach-Bliley Act's requirement that financial institutions provide a notice of its privacy policies and practices to its consumer customers. The rules, known collectively as the "privacy rule," do not specify any specific format or standardized wording for these notices. After the financial institutions distributed the first privacy notices, in response to concerns expressed by representatives of financial institutions, consumers, privacy advocates, and Members of Congress, the agencies conducted a workshop in December 2001 to consider how financial institutions could provide more useful

privacy notices to consumers.

Following on the workshop, the agencies published an Advance Notice of Proposed Rulemaking (ANPRM) and requested comments on a variety of subjects including the goals, elements, language, and mandatory or permissible aspects of privacy notices. 68 FR 75164 (Dec. 30, 2003). The notice also requests comments on the costs and benefits of a short notice. The comment period ended on March 29, 2004. Staff is reviewing the comments and continues to work with other agencies to determine the next steps.

Timetable:

Action	Date	FR Cite
ANPRM	12/30/03	68 FR 75164
Comment Period End	03/29/04	
Staff Recommendation to Commission	12/00/04	
Public Workshop	12/04/01	

Regulatory Flexibility Analysis

Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

URL For More Information:

www.regulations.gov/agcy_federaltradecommission.cfm

URL For Public Comments:

www.regulations.gov/agcy_federaltradecommission.cfm

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Related RIN: Related to 3084-AA85, Related to 3064-AC77, Related to 1550-AB86, Related to 3038-AJ06

RIN: 3084-AA97

Federal Trade Commission (FTC)

Proposed Rule Stage

4080. 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 late 2004.

Timetable:

Action	Date	FR Cite
Request for Comments	04/06/95	60 FR 17492
Commission Action/Part I	03/28/96	61 FR 13659
ANPRM	09/01/99	64 FR 48024
ANPRM Comment Period End	11/15/99	
Request for Comments (NPRM)	07/15/03	68 FR 41872

Action	Date	FR Cite
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NPRM Comment Period End 09/22/03

Recommendation to Commission 12/00/04

Regulatory Flexibility Analysis Required: No**Small Entities Affected:** Businesses**Government Levels Affected:** None**Agency Contact:** Hampton Newsome, Attorney, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580

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RIN: 3084-AA60**4081. 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 an 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 issued a report on August 25, 2004. The staff report sets forth the staff's recommendations to the Commission on various proposed amendments to the Franchise Rule. The Commission made the report available and published a request for comments on September 2, 2004. 69 FR 53661. The comment period ends on November 11, 2004. Staff anticipates forwarding its recommendations to the Commission in late 2005. The Commission did not review or approve the staff report prior to its issuance.

Timetable:

Action	Date	FR Cite
ANPRM	02/28/97	62 FR 9115
ANPRM Comment Period End	12/31/97	62 FR 28822
Recommendation to Commission	03/26/99	
NPRM	10/22/99	64 FR 57294
NPRM Comment Period End	12/21/99	
NPRM Rebuttal Comment Period End	01/31/00	
Staff Report Released	08/25/04	
Request for Comments on the Staff Report	09/02/04	69 FR 53661
Comment Period End	11/12/04	
Staff Recommendation to the Commission	12/00/05	

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** Businesses**Government Levels Affected:** State**Agency Contact:** Steven Toporoff, Attorney, Federal Trade Commission, Division of Marketing Practices, Bureau

FTC

Proposed Rule Stage

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RIN: 3084-AA63

4082. 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 (HSR Rules or 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 notification with 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 enable 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.

On April 8, 2004, the Commission issued a Notice of Proposed Rulemaking (NPRM) to reconcile, as far as practical, the current disparate treatment of corporations, partnerships, limited liability companies and other types of non-corporate entities under the Rules. 69 FR 18686. By the end of 2004, the Commission anticipates amending the HSR rules to allow parties to file the HSR form electronically via the Internet.

Timetable:

Action	Date	FR Cite
NPRM (Rule Change)	02/01/01	66 FR 8723
Interim Rule I (Statutory Changes)	02/01/01	66 FR 8680
Interim Rule II (Rules of Practice)	02/01/01	66 FR 8720
Comment Period End (Interim and Proposed Rules)	03/19/01	

Action	Date	FR Cite
Interim Final Rule With Request for Comments (Change From SIC to NAICS)	05/09/01	66 FR 23561
Effective Date (Change from SIC to NAICS)	07/01/01	
Final Rule Part 802.21	03/18/02	67 FR 11904
Final Rules Parts 801 and 802	03/18/02	67 FR 11898
Final Rules Parts 801 and 803	01/17/03	68 FR 2425
NPRM (Non-Corporate Entities)	04/08/04	69 FR 18686
NPRM Comment Period End	06/04/04	
Recommendation to Commission (E-filing)	12/00/04	

Regulatory Flexibility Analysis

Required: No

Government Levels Affected: None

URL For Public Comments:

www.regulations.gov

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Related RIN: Previously reported as 3084-AA23

RIN: 3084-AA91

4083. CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING ACT (CAN-SPAM) RULES

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

Legal Authority: 15 USC 7701 to 7713; 18 USC 1037

CFR Citation: 16 CFR 316

Legal Deadline: Final, Statutory, April 14, 2004, Marks for sexually explicit e-mail.

Final, Statutory, December 16, 2004, Final rule defining criteria to determine "primary purpose" of an e-mail.

The Act requires that the Commission issue a final rule concerning marks for sexually oriented e-mails within 120 days of enactment, or by April 14, 2004. The Commission announced the rule on April 13, 2004, and it was published in the **Federal Register** on April 19, 2004. The Act also requires that the Commission promulgate rules defining the criteria used to determine

the "primary purpose" of an e-mail within 12 months of enactment, or by December 16, 2004.

Abstract: The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the CAN-SPAM Act or the Act) Pub. L. No. 108-187, 15 USC 7701-7703, 18 USC 1307, was enacted on December 16, 2003. The Act requires that the Commission issue regulations: (1) prescribing marks for e-mail messages containing sexually oriented material within 120 days of enactment on April 14, 2004; and (2) defining the relevant criteria to facilitate the determination of the "primary purpose" of an electronic message within 12 months of enactment or by December 16, 2004. The Act also provides the Commission with discretionary rulemaking authority in the four areas identified in the March 11, 2004 ANPRM discussed below.

On January 29, 2004, the Commission published a Notice of Proposed Rulemaking ("NPRM") on the label for e-mail messages containing sexually oriented material. 69 FR 4263. The comment period for the NPRM ended on February 17, 2004. On April 13, 2004, the Commission announced its final rule prescribing a mark to be included in commercial e-mail that contains sexually oriented materials. 69 FR 21024 (Apr. 19, 2004). The final rule on labels went into effect on May 19, 2004.

On March 11, 2004, the Commission published an Advance Notice of Proposed Rulemaking ("ANPRM") and requested comments on how to determine an electronic mail message's primary purpose, including comment on criteria that would facilitate this determination in the mandatory portion of the rulemaking pursuant to the Act. 69 FR 11776. The notice also requests comment on four subjects for discretionary rulemaking under the Act, including: (1) the Act's definition of "transactional or relationship messages;" (2) the 10-business-day period for processing opt-out requests; (3) the Act's enumeration of "aggravated violations;" and (4) the implementation of the provisions of the CAN-SPAM Act generally. The comment period for the ANPRM closed on April 20, 2004. 69 FR 50091. The Commission published an NPRM on August 13,

FTC

Proposed Rule Stage

2004. 69 FR 50091. Staff is reviewing the comments and plans to make its recommendation to the Commission by November 2004.

Timetable:

Action	Date	FR Cite
NPRM – Labels	01/29/04	69 FR 4263
NPRM – Labels Comment Period End	02/17/04	
Final Rule on CAN–SPAM Labels	04/19/04	69 FR 21024
Final Rule Effective (Labels)	05/19/04	
ANPRM Request for Comment on “primary purpose” rule	03/11/04	69 FR 11776
Extension of Comment Period (“primary purpose”)	04/09/04	69 FR 18851
ANPRM Comment Period End (“primary purpose”)	04/20/04	
NPRM (“primary purpose”)	08/13/04	69 FR 50091
Recommendation to the Commission	11/00/04	
Final Rule	12/00/04	

**Regulatory Flexibility Analysis
Required:** No

Small Entities Affected: Businesses

Government Levels Affected: None

URL For More Information:

[www.regulations.gov/
agcy_federaltradecommission.cfm](http://www.regulations.gov/agcy_federaltradecommission.cfm)

URL For Public Comments:

[www.regulations.gov/
agcy_federaltradecommission.cfm](http://www.regulations.gov/agcy_federaltradecommission.cfm)

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RIN: 3084–AA96

4084. FDICIA

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1811 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rulemaking is related to RIN 3084-AA44 which was withdrawn in 2000. The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) assigns to the FTC responsibilities for certain non-federally insured depository institutions (DIs) and private 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. The Departments of Commerce, Justice, State and Related Agencies Appropriations Act of 1993, containing the Commission’s appropriation for 1993, provided that none of the funds were available for

expenses authorized by section 151 of FDICIA. Legislation containing the Commission’s appropriation for fiscal years 1994 to 2003 contained the same provision. However, the Consolidated Appropriations Act of 2003, did not include the provision prohibiting the FTC from spending funds on the tasks imposed by section 151 of FDICIA. Staff is drafting a Notice of Proposed Rulemaking (NPRM) and plans to forward it to the Commission by fall 2004.

Timetable:

Action	Date	FR Cite
NPRM	11/00/04	

**Regulatory Flexibility Analysis
Required:** No

Small Entities Affected: No

Government Levels Affected: None

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Related RIN: Related to 3084–AA44

RIN: 3084–AA99

Federal Trade Commission (FTC)

Final Rule Stage

**4085. FAIR AND ACCURATE CREDIT
TRANSACTIONS ACT OF 2003**

Priority: Substantive, Nonsignificant

Legal Authority: PL 108–159, 117 Stat. 1952

CFR Citation: 16 CFR 602; 16 CFR 603; 16 CFR 604; 16 CFR 610; 16 CFR 611; 16 CFR 613; 16 CFR 614; 16 CFR 682;

...

Legal Deadline: Final, Statutory, December 31, 2003, Effective Date for FACTA Provisions Affecting FCRA and State Laws.

Final, Statutory, February 11, 2004, Rules Specifying Effective Dates of FACTA Provisions Where Statute Does Not Specify Dates.

Final, Statutory, March 3, 2004, Rules Prohibiting Consumer Reporting

Agencies from Circumventing FACTA Provisions.

Final, Statutory, June 3, 2004, Rules Concerning Free Consumer Credit Reports.

Final, Statutory, September 4, 2004, Rules Allowing Consumers to Opt Out of Marketing by Affiliates.

The FACT Act requires that the Commission and other agencies complete rulemakings by deadlines set

FTC

Final Rule Stage

within the statute or by effective dates set by the Federal Reserve Board and the Commission by **Federal Register** notice.

Abstract: The Fair and Accurate Credit Transactions Act of 2003 (the "FACT Act" or "FACTA" or the "Act") was enacted on December 4, 2003. The Act requires that the Commission undertake a number of rulemakings and studies.

Effective Dates —

The FACT Act requires that the FTC, together with the banking agencies, jointly adopt the effective dates of portions of the statute where the effective dates are not prescribed within two months of enactment of the Act. On December 24, 2003, the Board of Governors of the Federal Reserve System (the Federal Reserve) and the FTC jointly adopted Interim Final Rules that established December 31, 2003, as the effective date for provisions of the Act that determine the relationship between the Fair Credit Reporting Act and State laws and provisions that authorize rulemakings or other implementing actions by agencies. 68 FR 74467. On December 24, 2003, the Federal Reserve and FTC also issued a Notice of Proposed Rulemaking (NPRM) requesting comments and specifying the effective dates for the other provisions of the FACT Act for which the statute does not specify an effective date. 68 FR 74529. The comment period for these notices ended on January 12, 2004. On February 11, 2004, the Commission and the Federal Reserve published joint final rules that established a schedule of effective dates for many of the provisions of the FACT Act for which the Act itself did not specifically provide an effective date. The Agencies also made final what had previously been interim; namely, establishing December 31, 2003, as the effective date for provisions of the Act that determine the relationship between the Fair Credit Reporting Act and State laws and provisions that authorize rulemakings or other implementing actions by agencies. 69 FR 6526.

The FACT Act also requires that the Commission adopt rules concerning credit reports and credit scores and related issues to be conducted jointly with the banking agencies, including the National Credit Union Administration (NCUA). The rulemaking mandates for the next 12 months are detailed below. Additional rule requirements are either mandatory

with no specified deadline or discretionary. These will be addressed once the mandatory rulemakings with deadlines are completed.

Credit Reports and Reporting Agencies Circumvention —

With respect to Credit Reports, the Act requires that the Commission issue rules by March 3, 2004, on preventing corporate and technological circumvention of the obligations imposed on nationwide consumer reporting agencies. On February 24, 2004, the FTC published an interim final rule prohibiting consumer reporting agencies from treatment as nationwide consumer reporting agencies and requested comments on this measure. 69 FR 8532. The interim final rule became effective on March 3, 2004, and the comment period closed on April 23, 2004. Staff is reviewing the comments.

Free Credit Reports —

By June 3, 2004, the FACT Act requires that the Commission issue rules concerning: (1) a centralized source for free consumer reports by national credit reporting agencies; (2) the provision of free credit reports by nationwide consumer reporting agencies; and (3) a streamlined process for consumers to obtain free credit reports from specialized bureaus. On March 19, 2004, the Commission requested comments on a proposed rule that would establish a centralized source, a standardized form, and a streamlined process through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency. 69 FR 13192. The comment period closed on April 16, 2004. On June 24, 2004, the Commission issued a final rule effective on December 1, 2004, for the provision of free reports to consumers, including (1) a central source whereby consumers can make one request and receive their consumer report from each of the three major nationwide consumer reporting agencies, and (2) rules with respect to the provision of free consumer reports by "nationwide specialty consumer reporting agencies," as defined in new FCRA section 603(w). 69 FR 35468.

Information Sharing Between Affiliates —

Three separate rulemakings - (1) FACTA gave the Commission, the banking agencies, and the NCUA authority to determine when the FACTA exception allowing medical

information to be shared among affiliates should apply. FACTA also required the banking agencies and NCUA but not the Commission to make rules by June 3, 2004, regarding when medical information can be obtained or used in connection with a credit decision. (2) By September 4, 2004, with the banking agencies, the NCUA, and the Securities and Exchange Commission (SEC), the Commission is required to issue rules to implement the Act's provisions allowing consumers to opt out of marketing by affiliates. The Commission issued an NPRM on June 15, 2004. 69 FR 33324. The Commission has not yet issued a final rule but anticipates doing so later this year.

Enhancement of Opt Out Notice (Prescreen Rule) —

By December 4, 2004, the Commission, in consultation with the banking agencies and the NCUA, is required to issue rules concerning the enhancement of notices to consumers about their right to opt out of prescreened solicitations. FACTA calls for these notices to be presented in a format and in a type, size, and manner that is simple and easy to understand. The Commission and other agencies issued an NPRM on October 5, 2004 and plan to announce the final rule by the statutory deadline. 69 FR 58861.

Disposal of Credit Report Information —

By December 4, 2004, the Commission is required, in coordination with the banking agencies, NCUA, and the SEC, to issue rules concerning the proper disposal of credit report information and records. On April 20, 2004, the Commission published an NPRM and Request for Comments. 69 FR 21388. The comment period ended on June 15, 2004. The Commission and other agencies expect to issue a Final Disposal Rule by early December 2004. The Commission proposes to make the Disposal Rule effective three months after publication of the final rule.

Other Required and Discretionary Actions on Credit Reports and Information —

(1) Also, with respect to credit reports and related issues, the Commission is required to issue rules effecting fair and reasonable fees for credit scores. The Commission expects to issue an NPRM seeking comments on reasonable fees for credit scores by November 2004. (2) The Act requires

FTC

Final Rule Stage

the Commission jointly with the Federal Reserve to issue rules addressing the form, content, time, manner, definitions, exceptions, and model of the risk-based pricing notice. (3) The Commission is required, in coordination with the banking agencies and NCUA, to issue guidelines and rules concerning credit report accuracy and rules relating to the ability of consumers to dispute information directly with furnishers as well as rules regarding reconciling addresses. (4) Finally, the Commission may issue rules regarding the compilation and submission to nationwide consumer reporting agencies of all complaints of inaccurate or incomplete files and the treatment of medical information in credit reporting agency files.

Identity Theft

The Act requires the Commission to promulgate a summary of consumers' identity theft rights and to mount a public education campaign regarding consumers' new identity theft rights. The Commission issued proposed summaries and notices of consumers' identity theft rights on July 16, 2004. 69 FR 42616. The Commission expects to issue final model notices during December 2004. FACTA requires the Commission to define certain terms that are relevant to consumers' new identity theft rights and to promulgate the length of time for active duty/military alerts "fraud alerts rule". On April 28, 2004, the Commission published an NPRM proposing rules that would establish definitions for "identity theft" and "identity theft report"; the duration of an "active duty alert"; and the "appropriate proof of identity" for purposes of Sections 605A (fraud alerts and active duty alerts), 605B (consumer report information blocks), and 609(a)(1) (truncation of Social Security numbers) of the FCRA, as amended by the FACT Act. 69 FR 23370. The comment period closed on June 15, 2004. The Commission published a Final Fraud Alerts Rule on November 3, 2004. 69 FR 63922. The rule will be effective on December 1, 2004. The Commission is also required, along with the banking agencies and NCUA, to promulgate a standard form for consumers to use to place fraud alerts, block fraudulent tradelines, or

otherwise complain to consumer reporting agencies about identity theft (the "Complaint Form") and to jointly promulgate with banking regulators identity theft "red flag" guidelines and rules to ensure these guidelines (the "ID theft red flag rule"). The ID theft red flag rule would, among other things, require card issuers to investigate requests for card changes and would require credit report users to investigate when the address on a credit report differs from the address on a credit application.

Miscellaneous —

On May 20, 2004, the Commission issued a final rule effective on June 21, 2004, making technical changes to earlier rules, establishing a general organizational scheme for subchapter F of chapter I of title 16 of the Code of Federal Regulations, and setting forth general provisions applicable to all FTC rules under the CRA. 69 FR 29061.

Timetable:

Action	Date	FR Cite
Joint Interim Final Rules (Effective Date FACT Act Provisions)	12/24/03	68 FR 74467
NPRM	12/24/03	68 FR 74529
Joint Final Rules (Effective Date FACT Act Provisions)	02/11/04	69 FR 6526
Interim Final Rule/Request for Comments (Prohibition Against Circumvention)	02/24/04	69 FR 8532
Interim Final Rule Comment Period End (Prohibition Against Circumvention)	04/23/04	
NPRM/Request for Comments (Free Annual Credit File Disclosures)	03/19/04	69 FR 13192
NPRM Comment Period End (Free Annual Credit File Disclosures)	04/16/04	
Final Rule (Free Annual Credit File Disclosures)	06/24/04	69 FR 35468
NPRM— Request for Comments (Information Sharing Between Affiliates)	06/15/04	69 FR 33324

Action	Date	FR Cite
Comment Period Extended (Affiliate Marketing NPRM)	07/21/04	69 FR 43546
Comment Period End (Affiliate Marketing)	08/16/04	
Final Rule re Opt Out of Marketing (Prescreen Opt Out Disclosure)	12/00/04	
NPRM — Request for Comments (Disposal of Consumer Report Information)	04/20/04	69 FR 21388
NPRM Comment Period End (Disposal of Consumer Report Information)	06/15/04	
Final Rule (Disposal of Consumer Report Information)	12/00/04	
NPRM Comment Period End (Identity Theft)	06/15/04	
NPRM — (Credit Score Fees)	11/00/04	
Proposed Summaries and Notices (Identity Theft Rights)	07/16/04	69 FR 42616
Final Action (Identity Theft Rights)	12/00/04	
NPRM (Identity Theft Fraud Alerts)	04/28/04	69 FR 23370
Final Rule (Identity Theft Fraud Alerts)	11/03/04	69 FR 63922
Final Rule (Miscellaneous Technical Amendments)	05/20/04	69 FR 29061
NPRM (Prescreen Opt Out Disclosure)	10/01/04	69 FR 58861
Effective Date (Identity Theft Rights)	12/00/04	
Effective Date (Identity Theft Fraud Alerts)	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA94

Federal Trade Commission (FTC)

Completed Actions

4086. 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 non liquid alternative fuels as well as alternative-fueled vehicles. AFV's are vehicles designed to operate on at least one alternative fuel and do not include hybrid electric vehicles. Most AFV's are purchased by governments and private fleets. 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. After assessing the public comments, the Commission amended the rule to delete vehicle-specific emission information from the labels and added a reference to the EPA's green vehicle guide website, <http://www.epa.gov/greenvehicle>, which provides detailed comparative information about vehicle emissions generally and by vehicle model. 69 FR 55332 (Sept. 14, 2004). The amendment will become effective on March 31, 2005.

Timetable:

Action	Date	FR Cite
Request for Comments	05/08/03	68 FR 24669
Comment Period End	06/23/03	
Recommendation to Commission	07/00/04	
Final Rule	09/14/04	69 FR 55332
Final Rule Effective	03/31/05	

Regulatory Flexibility Analysis Required: No**Small Entities Affected:** Businesses**Government Levels Affected:** None**Agency Contact:** Neil Blickman, Attorney, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580

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Email: nblickman@ftc.gov**Related RIN:** Previously reported as 3084-AA57**RIN:** 3084-AA89**4087. CONTACT LENS RULE****Priority:** Substantive, Nonsignificant**Legal Authority:** 15 USC 7601 to 7610**CFR Citation:** 16 CFR 315**Legal Deadline:** None

Abstract: The Fairness to Contact Lens Consumers Act ("the Act"), 15 USC 7601-7610 (Pub. L. No. 108-164), was enacted on December 6, 2003. Among other things, the Act mandates that prescribers, such as optometrists and ophthalmologists provide contact lens prescriptions to their patients upon the completion of a contact lens fitting, and that prescribers verify contact lens prescriptions to third-party contact lens sellers who are authorized by consumers to seek such verification.

The Act also directs the Commission to prescribe implementing rules. On February 4, 2004, the Commission published a Notice of Proposed Rulemaking ("NPRM") in the Federal Register seeking comment on its proposed rule. 69 FR 5440. The period for comments closed April 5, 2004, and the Commission published its final Contact Lens Rule on July 2, 2004. 69 FR 40482. The Contact Lens Rule took effect on August 2, 2004.

Timetable:

Action	Date	FR Cite
Request for Comments on NPRM	02/04/04	69 FR 5440
NPRM Comment Period End	04/05/04	
Final Rule	07/02/04	69 FR 40482
Final Rule Effective	08/02/04	

Regulatory Flexibility Analysis Required: No**Small Entities Affected:** Businesses**Government Levels Affected:** None**URL For More Information:**www.regulations.gov/agcy_federaltradecommission.cfm**URL For Public Comments:**contactlensrule@ftc.gov;www.regulations.gov/agcy_federaltradecommission.cfm**Agency Contact:** Thomas B. Pahl, Assistant Director, Division of Advertising Practices, Federal Trade Commission, Bureau of Consumer Protection, Washington, DC 20580
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Email: cpagar@ftc.gov**Related RIN:** Related to 3084-AA80**RIN:** 3084-AA95**4088. TELEMARKETING SALES RULE****Priority:** Substantive, Nonsignificant**Legal Authority:** 15 USC 6101 to 6108**CFR Citation:** 16 CFR 310**Legal Deadline:** NPRM, Statutory, March 23, 2004, 30-Day "Do-Not-Call" Registry.

Abstract: This rulemaking is related to RIN 3084-AA86. In 1995, the Commission issued the Telemarketing Sales Rule (TSR), 16 CFR part 310, under the Telemarketing and Consumer Fraud and Abuse Prevention Act (TSR Act), 15 USC 6101-6108. The TSR requires telemarketers to disclose information; prohibits misrepresentations; limits the times telemarketers may call consumers; prohibits calls to consumers who ask not to be called again; and sets payment restrictions for the sale of certain goods and services. In the Fall 2003 Agenda, the Commission reported that it had completed its review of the TSR as required by the TSR Act. That review was summarized in the statement of basis and purpose for the Amended TSR. 68 FR 4580 (Jan. 29, 2003). Among other changes, the Amended TSR established the National Do Not Call Registry, enabling consumers to register their preference not to receive telemarketing calls.

On July 31, 2003, the Commission published a Final Rule further amending the TSR by establishing the fees that would be charged to entities engaged in telemarketing that access the National Registry. 68 FR 45134.

The Consolidated Appropriations Act of 2004, Pub. L. No. 188-199, 188 Stat.

FTC

Completed Actions

3, Division B, Title V (Appropriations Act), which was enacted on January 23, 2004, required that the Federal Trade Commission amend the TSR within 60 days of enactment to require telemarketers subject to the TSR to obtain from the FTC the list of telephone numbers on the "do-not-call" registry once a month. Accordingly, the Federal Trade Commission announced a proposal to amend the "do-not-call" provisions of the TSR to require that telemarketers subject to the Rule access the national "do-not-call" registry and purge numbers on the registry from their call lists every month, instead of every quarter as the Rule originally required. 69 FR 7330 (Feb. 13, 2004). The proposal would also allow a consumer to assert a valid "do-not-call" complaint thirty days after entering his or her number rather than waiting three months as originally required. On March 23, 2004, the Commission announced that the amendments to the Rule provisions will become effective on January 1, 2005. 69 FR 16368 (Mar. 29, 2004).

In the Appropriations Act, Congress also authorized the Commission to collect fees of \$23.1 million in Fiscal Year 2004 to implement and enforce the Amended TSR. Pursuant to the Appropriations Act, the Commission

published an NPRM that would amend the TSR to revise the fees charged for industry access to the national "do-not-call" registry. 69 FR 23701 (Apr. 30, 2004). On July 30, 2004, the Commission published a Final Rule revising those fees. 69 FR 45580. Under the new fee structure, the annual fee for each area code of data accessed will be \$40, and the maximum amount that any entity will be charged — for access to 280 area codes of data or more — will be \$11,000. The Final Rule continues to allow all entities accessing the Registry to obtain the first five area codes of data for free, and allows those entities exempt from the Registry's requirements to obtain access at no charge. The new fee schedule is effective September 1, 2004.

Timetable:

Action	Date	FR Cite
NPRM – Monthly Access Requirement	02/13/04	69 FR 7330
Comment Period End	02/26/04	
Final Rule Announced	03/23/04	
Final Rule (31 day access requirement)	03/29/04	69 FR 16368
Final Action Effective (31 day access requirement)	01/01/05	
Amended Fees NPRM	04/30/04	69 FR 23701

Action	Date	FR Cite
Comment Period End	06/01/04	
Final Rule (revised fee schedule)	07/30/04	69 FR 45580
Effective date of new fee schedule	09/01/04	

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

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Related RIN: Related to 3084-AA86**RIN:** 3084-AA98

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