



# Federal Register

---

**Monday,  
April 30, 2007**

---

**Part LV**

## **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 to 612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, title II of Public Law 104-121, 110 Stat. 847. The Commission’s agenda follows guidelines and procedures issued January 31, 2007, 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) and Executive Order No. 13422 of January 18, 2007, 72 FR 2763 (Jan. 23, 2007).

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 Telemarketing Sales Rule, 16 CFR part 310; (4) Test Procedures and Labeling Standards for Recycled Oil, 16 CFR part 311; (5) Children’s Online Privacy Protection Rule, 16 CFR part 312; (6) Privacy of Consumer Financial Information, 16 CFR part 313; (7) Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM) Rules, 16 CFR part 316; (8) Mail

or Telephone Order Merchandise Rule, 16 CFR 435; (9) the Franchise and Business Opportunities Rule, 16 CFR part 436; (10) the Business Opportunity Rule, to be codified at 16 CFR part 437; (11) the Funeral Rule, 16 CFR part 453; (12) the Used Motor Vehicle Trade Regulation Rule, 16 CFR part 455; (13) certain rules adopted pursuant to the Fair and Accurate Credit Transactions Act of 2003 (FACTA), 16 CFR parts 602, 603, 604, 610, 611, 613, 614, 682, and 698; and (14) rulemakings pursuant to the Energy Policy Act of 2005.

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 [www.regulations.gov](http://www.regulations.gov) 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 every 10 years about all of its regulations and guides, including their costs and benefits and regulatory and economic impact. 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](mailto:svidas@ftc.gov); or G. Richard Gold, Attorney, telephone: (202) 326-3355; e-mail: [rgold@ftc.gov](mailto: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
3627	Regulatory Review .....	3084-AA47
3628	Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986 .....	3084-AA48
3629	Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 .....	3084-AA78
3630	Trade Regulation Rule on Funeral Industry Practices .....	3084-AA82
3631	Premerger Notification Rules and Report Form .....	3084-AA91
3632	Used Motor Vehicle Trade Regulation Rule .....	3084-AB05
3633	Mail or Telephone Order Merchandise Rule .....	3084-AB07

## FTC

## Federal Trade Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3634	Rules Implementing the CAN-SPAM Act of 2003 .....	3084-AA96
3635	Privacy of Consumer Financial Information .....	3084-AA97
3636	Telemarketing Sales Rule .....	3084-AA98
3637	The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) .....	3084-AA99
3638	Rulemakings Pursuant to Energy Policy Act of 2005 .....	3084-AB03
3639	Business Opportunity Rule .....	3084-AB04

## Federal Trade Commission—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3640	Fair and Accurate Credit Transactions Act of 2003 .....	3084-AA94

## Federal Trade Commission—Completed Actions

Sequence Number	Title	Regulation Identifier Number
3641	Trade Regulation Rule on Franchising and Business Opportunity Ventures .....	3084-AA63
3642	Test Procedures and Labeling Standards for Recycled Oil .....	3084-AB06

## Federal Trade Commission (FTC)

## Prerule Stage

## 3627. 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 December 29, 2006, the Commission published a notice announcing the one rule and two guides it plans to review in 2007 and modifying the 10-year schedule for its

regulatory review program (71 FR 78390).

**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	01/12/05	70 FR 2074
Notice of Rules and Guides to Review in 2006	12/29/05	70 FR 77077
Notice of Rules and Guides to Review in 2007	12/29/06	71 FR 78390
Notice of Rules and Guides to Review in 2008	01/00/08	

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Janice Podoll Frankle, Staff Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580  
Phone: 202 326-3022  
Email: jfrankle@ftc.gov

**RIN:** 3084-AA47

**3628. 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

## FTC

## Prerule Stage

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, 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 by fall 2007.

**Timetable:**

Action	Date	FR Cite
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)	10/00/07	

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** Businesses**Government Levels Affected:** None**Agency Contact:** Rosemary Rosso, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580

Phone: 202 326-2174

Email: rosso@ftc.gov

**RIN:** 3084-AA48**3629. TRADE REGULATION RULE PURSUANT TO THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992****Priority:** Substantive, Nonsignificant**Legal Authority:** 15 USC 5701 et seq**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 September 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 received 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 the end of 2007.

**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	
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	12/00/07	

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** Businesses**Government Levels Affected:** None**Agency Contact:** Ruth Yodaiken, Attorney, Federal Trade Commission,

## FTC

## Prerule Stage

Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580

Phone: 202 326-2127

Email: ryodaiken@ftc.gov

RIN: 3084-AA78

### 3630. 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 10-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 anticipates forwarding a recommendation to the Commission by late spring 2007.

#### 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	
Public Workshop Recommendation to Commission	11/18/99	64 FR 56717
	05/00/07	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**Agency Contact:** Monica E. Vaca, Attorney, Federal Trade Commission, Division of Marketing Practices, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580

Phone: 202 326-2245

Email: mvaca@ftc.gov

RIN: 3084-AA82

### 3631. 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 noncorporate entities under the rules (69 FR 18686). On February 22, 2005, the Commission issued its final rule, which was effective on April 7, 2005 (70 FR 11502; Mar. 8, 2005). Among other things, the amendments address acquisitions of interests in unincorporated entities; formations of unincorporated entities; and the application of certain exemptions, including the intraperson exemption. On August 15, 2005, the Commission published an NPRM that would amend 16 CFR part 803 to allow filing parties to provide Internet links to certain documents in lieu of paper copies (70 FR 47733). The comment period closed on October 14, 2005. On December 12, 2005, a final rule was published (70 FR 73369). It became effective on January 11, 2006. The rule change also addressed the issue of "stale filings," in which parties make Premerger Notification filings but fail within the ensuing 18 months to comply with a Request for Additional Information and Documentary Material. Under the new rule, such filings expire 18 months after they are received by the agencies. On December 30, 2005, the Commission issued another final rule, effective upon publication, requiring filers to use 2002 NAICS codes and to use 2002 revenue data for base year reporting (replacing the 1997 codes and revenue information) (70 FR 77312). This rule provides for a 30-day grace period during which filers may use 1997 or 2002 information, provided all parties to the transaction use the same year and same codes. Beginning January 30, 2006, all filers must use 2002 data and codes.

On June 23, 2006, the Commission published a final rule providing for electronic submission of premerger notification filings. 71 FR 35995. This rule was effective upon publication.

Pursuant to the 2000 Amendments to section 7A of the Clayton Act, codified at 15 U.S.C. 18a, the filing thresholds are revised annually based on the change in gross national product. These thresholds have recently been raised with the baseline reporting figure of the size of transaction test under section 7A(a)(2)(B)(i) now \$59.8 million, which was effective 30 days from publication

## FTC

## Prerule Stage

in the Federal Register. 72 FR 2692 (Jan. 22, 2007). Finally, staff continues to review various HSR rules and plans to forward its recommendation to the Commission during 2007.

**Timetable:**

Action	Date	FR Cite
NPRM (Rule Change) Interim Rule I (Statutory Changes)	02/01/01	66 FR 8723
Interim Rule II (Rules of Practice)	02/01/01	66 FR 8720
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 (Noncorporate Entities)	04/08/04	69 FR 18686
Final Rule (Noncorporate Entities)	03/08/05	70 FR 11502
Effective Date (Final Rule on Noncorporate Entities)	04/07/05	
NPRM (Internet Links and "Stale" Filings)	08/15/05	70 FR 47733
NPRM (Internet Links and "Stale" Filings) Comment Period End	10/14/05	
Final Rule (Internet Links and "Stale" Filings)	12/12/05	70 FR 73369
Final Rule (Electronic Filings)	06/23/06	71 FR 35995
Final Rule on Electronic Filings Effective	06/23/06	
Staff Recommendation to Commission	09/00/07	

**Regulatory Flexibility Analysis**

**Required:** No

**Government Levels Affected:** None

**URL For Public Comments:**

www.regulations.gov

**Agency Contact:** Marian Bruno, Assistant Director, Federal Trade Commission, Bureau of Competition, 600 Pennsylvania Avenue NW, Washington, DC 20580  
Phone: 202 326-2846

Email: mbruno@ftc.gov

**Related RIN:** Previously reported as 3084-AA23

**RIN:** 3084-AA91

**3632. USED MOTOR VEHICLE TRADE REGULATION RULE**

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

**Legal Authority:** 15 USC 2309

**CFR Citation:** 16 CFR 455

**Legal Deadline:** None

**Abstract:** Effective in 1985 and last reviewed in 1995, the Used Motor Vehicle Trade Regulation Rule (or "Used Car Rule") sets out the general duties of a used vehicle dealer and provides for a label on the window of the car describing the condition of the car and whether it is warrantied by the used vehicle dealer. The Used Car Rule also prohibits the used vehicle dealer from making statements contrary to those on the label. Staff plans to forward a recommendation to the Commission regarding the review during spring 2007.

**Timetable:**

Action	Date	FR Cite
Recommendation to Commission (ANPRM)	05/00/07	

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**Agency Contact:** John Hallerud, Attorney, Federal Trade Commission, 55 W. Monroe Street, Suite 1825, Chicago, IL 60603-5001  
Phone: 312 960-5615  
Email: jhallerud@ftc.gov

**RIN:** 3084-AB05

**3633. • MAIL OR TELEPHONE ORDER MERCHANDISE RULE**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 15 USC 57a; 5 USC 552

**CFR Citation:** 16 CFR 435

**Legal Deadline:** None

**Abstract:** Issued in 1975, and last amended in 1995, this rule requires

that, when sellers advertise merchandise, they must have a reasonable basis for stating or implying that they can ship within a certain time. If sellers make no shipment statement, they must have a reasonable basis for believing that they can ship within 30 days. In the event of delays in shipment, the rule establishes notification procedures whereby buyers have the option either to agree to the delay or to cancel the order and receive a prompt refund. The rule applies when a consumer places an order by mail or telephone and also by indirect use of telephone via facsimile or computer.

During 2007, the Commission plans to request comments on the rule as part of the Commission's systematic review of all current Commission rules and guides. Staff plans to recommend that the Commission seek comments on possible non-substantive changes to the rule to bring it into conformity with changing conditions, including consumers using 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. The Commission also plans to seek 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.

**Timetable:**

Action	Date	FR Cite
ANPRM	05/00/07	

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** Businesses, Organizations

**Government Levels Affected:** None

**Agency Contact:** Joel N. Brewer, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580  
Phone: 202 326-2967

**Related RIN:** Related to 3084-AA19

**RIN:** 3084-AB07

## Federal Trade Commission (FTC)

## Proposed Rule Stage

**3634. RULES IMPLEMENTING THE CAN-SPAM ACT OF 2003**

**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.

**Abstract:** The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the CAN-SPAM Act or the Act) Public Law No. 108-187, 15 U.S.C. 7701 to 7703, 18 U.S.C. 1307, was enacted on December 16, 2003. The Act required 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. 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 (Final Rule) (69 FR 21024; Apr. 19, 2004); (NPRM) (69 FR 4263; Jan. 29, 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 Commission announced the final rule regarding an electronic mail message's primary purpose on December 16, 2004 (Final Rule) (70 FR 3110; Jan. 19, 2005); (NPRM) (69 FR 50091; Aug. 13, 2004). The rule became effective on March 28, 2005.

The CAN-SPAM Act also provided the Commission with discretionary rulemaking authority in several other areas identified below. After issuing an ANPRM (69 FR 11776; Mar. 11, 2004), the Commission published an NPRM on May 12, 2005, that proposed rule

provisions on five topics: (1) Defining the term "person," a term used repeatedly throughout the Act but not defined there; (2) modifying the definition of "sender" to make it easier to determine which of multiple parties advertising in a single e-mail message will be responsible for complying with the Act's "opt-out" requirements; (3) clarifying that Post Office boxes and private mailboxes established pursuant to United States Postal Service regulations constitute "valid physical postal addresses" within the meaning of the Act; (4) shortening from 10 days to 3 the time a sender may take before honoring a recipient's opt-out request; and (5) clarifying that to submit a valid opt-out request, a recipient cannot be required to pay a fee, provide information other than his or her e-mail address and opt-out preferences, or take any steps other than sending a reply e-mail message or visiting a single Internet Web page (70 FR 25426). The comment period closed on June 27, 2005, and staff is currently reviewing and analyzing the comments received in response to the NPRM in order to formulate a final recommendation to the Commission during 2007.

**Timetable:**

Action	Date	FR Cite
NPRM - Labels	01/29/04	69 FR 4263
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 and Discretionary Rules	03/11/04	69 FR 11776
Extension of Comment Period (Primary Purpose and Discretionary Rules)	04/09/04	69 FR 18851
ANPRM Comment Period End (Primary Purpose and Discretionary Rules)	04/20/04	
NPRM (Primary Purpose)	08/13/04	69 FR 50091
Final Rule (Primary Purpose)	01/19/05	70 FR 3110
NPRM (Discretionary Rules)	05/12/05	70 FR 25426
Recommendation to Commission (Discretionary Rules)	10/00/07	

**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

**Agency Contact:** Janis Kestenbaum, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580

Phone: 202 326-2798

Email: jkestenbaum@ftc.gov

**RIN:** 3084-AA96

**3635. PRIVACY OF CONSUMER FINANCIAL INFORMATION**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 15 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 (Privacy Rule) 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 Privacy Rule does not specify any format or standardized wording for these 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. Subsequently, the agencies published an advance notice of proposed rulemaking (ANPRM) and requested comments on a variety of subjects including the goals, elements, language, costs and benefits, or permissible aspects of alternative privacy notices (68 FR 75164; Dec. 30, 2003). The comment period ended on March 29, 2004. The seven agencies thereafter funded consumer research and testing to inform the development of alternative privacy notices that are easier for consumers to understand and use.

As directed by section 728 of the Financial Services Relief Act of 2006, Public Law No. 109-351, which added section 503(e) to the GLB Act, the Commission together with seven other

## FTC

## Proposed Rule Stage

federal agencies (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 Commission) must propose a model form that may be used at the option of financial institutions for the privacy notices required under GLB within 280 days after enactment, or by April 11, 2007. On March 29, 2007, the agencies published an NPRM proposing a model form of the prototype privacy notice developed during the consumer research testing project undertaken by first six, then seven of these agencies. 72 FR 14940. Errata were published in the Federal Register on April 5, 2007, 72 FR 16875. The comment period ends on May 29, 2007. Staff of the agencies plan to review the comments and make their recommendations by the end of the year.

**Timetable:**

Action	Date	FR Cite
Public Workshop	12/04/01	
ANPRM	12/30/03	68 FR 75164
ANPRM Comment Period End	03/29/04	
NPRM	03/29/07	72 FR 14940
Errata	04/05/07	72 FR 16875
NPRM Comment Period End	05/29/07	
Agency Action	12/00/07	

**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)

**Agency Contact:** Loretta Garrison, Senior Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580  
Phone: 202 326-3043  
Email: [lgarrison@ftc.gov](mailto:lgarrison@ftc.gov)

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

**RIN:** 3084-AA97

**3636. TELEMARKETING SALES RULE**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 15 USC 6101 to 6108

**CFR Citation:** 16 CFR 310

**Legal Deadline:** None

**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 U.S.C. 6101 to 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. Among other changes, the amended TSR established the National Do-Not-Call Registry, enabling consumers to register their preference not to receive telemarketing calls (68 FR 4580; Jan. 29, 2003). To date, consumers have registered over 140 million telephone numbers on the Registry, which accepts home land line and personal cell phone numbers at <http://www.donotcall.gov> or 1-888-382-1222.

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 Do-Not-Call Registry (68 FR 45134).

The Consolidated Appropriations Act of 2004, Public Law No. 188-199, 188 Stat. 3, Division B, title V (Appropriations Act), 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 National Do-Not-Call Registry once a month. After notice and comment, the Federal Trade Commission amended the TSR on March 23, 2004, requiring 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, and also allowing a consumer to assert a valid "do-not-call" complaint 30 days after entering his or

her number rather than waiting 3 months as originally required (69 FR 16368; Mar. 29, 2004)(Final Rule); (69 FR 7330; Feb. 13, 2004)(NPRM).

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. On July 30, 2004, the Commission published a final rule revising the fees charged for industry access to the National Do-Not-Call Registry (69 FR 45580) (Final Rule); (69 FR 23701; Apr. 30, 2004) (NPRM). On April 22, 2005, the Commission published a new NPRM to revise the fees charged the industry for access to the National Do-Not-Call Registry (70 FR 20848). The comment period ended on June 1, 2005, and the Commission thereafter announced a revised fee schedule that became effective on September 1, 2005 (70 FR 43273; July 27, 2005). On May 1, 2006, the Commission published an NPRM seeking comments about whether to review the fees charged the industry for access to the National Do-Not-Call Registry. 71 FR 25512. On July 31, 2006, the Commission issued a final rule revising the fee structure charged to industry. 71 FR 43048.

Under the new structure, the annual fee for each area code of data accessed will be \$62, and the maximum amount charged to entities accessing 280 area codes or more will be \$17,050. The rulemaking still allows telemarketers 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 revised fees were effective on September 1, 2006. During Spring 2007, staff anticipates that the Commission will publish a new NPRM to revise the fees charged the industry for access to the National Do-Not-Call Registry.

On November 17, 2004, the Commission published an NPRM proposing to create a new safe harbor that would allow prerecorded messages in certain defined situations, announcing the Agency's forbearance from enforcing the TSR's current call abandonment provisions against callers that engage in prerecorded message telemarketing so long as they comply with the proposed change, and seeking comment on a requested change in the method used to calculate the percentage of abandoned calls. 69 FR



## FTC

## Proposed Rule Stage

67287. The comment period ended on January 10, 2005.

On October 4, 2006, the Commission issued a revised NPRM and announced that it would not create a new safe harbor for prerecorded messages and therefore would end its forbearance policy permitting such messages effective January 2, 2007. 71 FR 58716. The revised and extended comment period ended on December 18, 2006. 71 FR 65762. The revised NPRM proposes to make explicit that the TSR's call abandonment provision bars sellers and telemarketers from delivering a prerecorded message when a person answers a telemarketing call, except in the very limited circumstances permitted in the call abandonment safe harbor and when a consumer has consented, in writing, to receive such calls. The revised NPRM also proposes to change 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."

On November 3, 2006, the Commission granted a petition requesting a 40-day extension to the original 30-day comment period on the revised NPRM from November 6, 2006, to December 18, 2006. 71 FR 65762 (Nov. 9, 2006). On December 18, 2006, the Commission granted four petitions requesting an extension of its enforcement forbearance policy permitting prerecorded calls subject to certain conditions until the conclusion of the prerecorded call rulemaking proceeding. 71 FR 77634 (Dec. 27, 2006).

**Timetable:**

Action	Date	FR Cite
NPRM – Monthly Access Requirement	02/13/04	69 FR 7330
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
Final Rule (Revised Fee Schedule)	07/30/04	69 FR 45580
Effective Date of New Fee Schedule	09/01/06	
NPRM (Fee Changes)	04/22/05	70 FR 20848

Action	Date	FR Cite
NPRM Comment	06/01/05	
Period End (Fee Changes)		
Final Rule (Fee Changes)	07/27/05	70 FR 43273
Effective Date of New Fee Schedule	09/01/05	
NPRM on Call Abandonment and Prerecorded Messages	11/17/04	69 FR 67287
NPRM Comment	01/10/05	
Period End (Call Abandonment)		
Final Rule (Fee Changes)	07/31/06	71 FR 43048
New Fee Schedule Effective	09/01/06	
Revised NPRM (Call Abandonment)	10/04/06	71 FR 58716
Revised NPRM Comment Period Extended (Call Abandonment)	11/09/06	71 FR 65762
Revised NPRM Comment Period End (Call Abandonment)	12/18/06	
NPRM Enforcement Forbearance Policy Reinstated (Call Abandonment)	12/27/06	71 FR 77634
Commission Action (Call Abandonment)	08/00/07	
NPRM (Fee Changes)	05/00/07	
Final Rule (Fee Changes)	08/00/07	
Final Rule (Fee Changes) Effective	09/00/07	

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**URL For More Information:**

[www.ftc.gov/opa/2004/11/tsramend.htm](http://www.ftc.gov/opa/2004/11/tsramend.htm)

**Agency Contact:** Craig Tregillus, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580  
Phone: 202 326–2970  
Email: ctregillus@ftc.gov

John A Krebs, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580  
Phone: 202 326–2692  
Email: jkrebbs@ftc.gov

**Related RIN:** Related to 3084–AA86

**RIN:** 3084–AA98

**3637. THE FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991 (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 FDICIA assigns to the FTC responsibilities for certain non-federally insured depository institutions (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 2004 and 2005 did not include the provision prohibiting the FTC from spending funds on the tasks imposed by section 151 of FDICIA. The Commission published a notice of proposed rulemaking (NPRM) requesting public comments on proposed disclosure requirements to implement section 151 on March 16, 2005 (70 FR 12823). The comment period ended on June 15, 2005. Staff anticipates forwarding its recommendation to the Commission by spring 2007.

**Timetable:**

Action	Date	FR Cite
NPRM	03/16/05	70 FR 12823
NPRM Comment	06/15/05	
Period End		
Staff	05/00/07	
Recommendation to Commission		

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Patricia Bak, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580  
Phone: 202 326–2842  
Email: pbak@ftc.gov

## FTC

## Proposed Rule Stage

Hampton Newsome, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580  
Phone: 202 326-2889  
Email: hnewsome@ftc.gov

**Related RIN:** Related to 3084-AA44

**RIN:** 3084-AA99

### 3638. RULEMAKINGS PURSUANT TO ENERGY POLICY ACT OF 2005

**Priority:** Substantive, Nonsignificant

**Legal Authority:** PL 109-58, 119 Stat 594

**CFR Citation:** Not Yet Determined

**Legal Deadline:** NPRM, Statutory, November 8, 2005, Appliance Labeling Effectiveness.

Final, Statutory, February 8, 2007, Ceiling Fan Labeling.

Final, Statutory, August 8, 2007, Appliance Labeling Effectiveness.

**Abstract:** Section 137 of the Energy Policy Act of 2005 requires the Commission to consider “the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and in improving energy efficiency.” As part of this effort, the Act directs the Commission to consider “changes to the labeling rules (including categorical labeling) that would improve the effectiveness of consumer product labels.” The Act gave the Commission 90 days to initiate the rulemaking and 2 years to complete it. On November 2, 2005, the Commission published an Advance Notice of Proposed Rulemaking seeking comments about the effectiveness of the FTC’s energy labeling regulations for consumer products, generally referred to as the Appliance Labeling Rule (16 CFR part 305). The Commission then held a public workshop on May 3, 2006, which examined the effectiveness of the Appliance Labeling Rule and where participants discussed comments already submitted for the ANPRM. The Commission announced publication of an NPRM on January 30, 2007. 72 FR 68636 (Feb. 13, 2007). The staff anticipates sending a final recommendation to the Commission by June 2007.

Section 137(a) of the Act also mandates that, within 18 months of enactment, the Commission issue by rule labeling requirements for the electricity used by ceiling fans to circulate air in a room. The Commission published an NPRM on June 21, 2006 (71 FR 35584). The comment period ended on September 8, 2006. The final rule on ceiling fan labeling was published on December 28, 2006. 71 FR 78057. The rule will be effective on January 1, 2009.

#### Timetable:

Action	Date	FR Cite
ANPRM (Appliance Labeling Effectiveness)	11/02/05	70 FR 66307
ANPRM Comment Period End (Appliance Labeling Effectiveness)	01/13/06	
NPRM (Ceiling Fan Labeling)	06/21/06	71 FR 35584
NPRM Comment Period End (Ceiling Fan Labeling)	09/08/06	
Final Rule (Ceiling Fan Labeling)	12/28/06	71 FR 78057
NPRM (Appliance Labeling Effectiveness)	02/13/07	72 FR 6836
Staff Recommendation to the Commission (Appliance Labeling Effectiveness)	05/00/07	
Final Rule (Appliance Labeling Effectiveness)	08/00/07	

#### Regulatory Flexibility Analysis

**Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**Agency Contact:** Hampton Newsome, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580  
Phone: 202 326-2889  
Email: hnewsome@ftc.gov

**RIN:** 3084-AB03

### 3639. BUSINESS OPPORTUNITY RULE

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 15 USC 41 to 58

**CFR Citation:** 16 CFR 437

**Legal Deadline:** None

**Abstract:** From the review of the current Franchise Rule (RIN 3084-AA63), staff recommended that the rule be split into two parts: One part addressing franchise issues and the second addressing business opportunity issues. On April 6, 2006, the Commission announced publication of a Notice of Proposed Rulemaking seeking comment on this proposed Business Opportunity Rule. The proposed rule addresses fraud in the offer and sale of business opportunity ventures by requiring business opportunity sellers to furnish specific pre-sale disclosures to prospective purchasers, as well as prohibiting specific conduct that the rulemaking record and the Commission’s law enforcement experience show are prevalent problems. The extended comment period closed on July 17, 2006. A subsequent extended rebuttal comment period closed on September 29, 2006. Staff anticipates publishing its report in December 2007.

#### Timetable:

Action	Date	FR Cite
NPRM	04/12/06	71 FR 19054
NPRM Comment Period End	06/16/06	
Rebuttal Comment Period End	07/07/06	
NPRM Comment Period Extended	06/01/06	71 FR 31124
Extended Comment Period End	07/17/06	
NPRM Comment Period Extended	08/15/06	71 FR 46878
Extended Rebuttal Comment Period End	09/29/06	
Staff Report	12/00/07	

#### Regulatory Flexibility Analysis

**Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** State

**Agency Contact:** Monica E. Vaca, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580  
Phone: 202 326-2245  
Email: mvaca@ftc.gov

**Related RIN:** Split from 3084-AA63

**RIN:** 3084-AB04

## Federal Trade Commission (FTC)

## Final Rule Stage

**3640. 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; 16 CFR 698;**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.

**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 required that the FTC, together with the Board of Governors of the Federal Reserve System (the Federal Reserve), jointly adopt the effective dates of portions of the statute where the effective dates are not prescribed within 2 months of enactment of the Act. On December 24, 2003, 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). 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).

**CREDIT REPORTS AND RELATED ISSUES —**

The FACT Act requires that the Commission adopt rules concerning credit reports and credit scores and related issues. Most of the proceedings are to be conducted jointly with the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision (the banking agencies), and the National Credit Union Administration (NCUA). The rulemaking mandates are detailed below.

**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 avoiding 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 has reviewed the comments and is considering what additional action is appropriate.

**Free Credit Reports —**

The FACT Act required that the Commission issue rules concerning: (1) A centralized source for free consumer reports by nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies; (2) the provision of free credit reports by nationwide consumer reporting agencies and nationwide specialty 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 specialty consumer reporting agency (69 FR 13192). On June 24, 2004, the Commission published 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).

**Use of Consumer Information by Affiliates for Marketing Purposes —**

The Commission, along with the banking agencies, the NCUA, and the Securities and Exchange Commission (SEC), 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 extended comment period closed on August 16, 2004. The agencies are assessing the comments, and expect to publish an interim final rule by June 2007.

**Enhancement of Opt Out Notice (Prescreen Rule) —**

The Commission, in consultation with the banking agencies and the NCUA, was also 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 published an NPRM on October 1, 2004 (69 FR 58861), and subsequently published the final rule on January 31, 2005 (70 FR 5022). The prescreen rule was effective on August 1, 2005.

**Disposal of Credit Report Information —**

By December 4, 2004, the Commission was 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

## FTC

## Final Rule Stage

Request for Comments (69 FR 21388). The Commission and the other agencies published a Final Disposal Rule on November 24, 2004 (69 FR 68690). The Disposal Rule was effective on June 1, 2005.

#### Credit Bureau Charge for Credit Scores —

The Commission is authorized to determine a fair and reasonable fee that consumer reporting agencies may charge for disclosure of credit scores. On November 8, 2004, the Commission issued an ANPRM seeking comments on rules effecting fair and reasonable fees for credit scores (69 FR 64698). The comment period closed on January 5, 2005, and the staff has reviewed comments and is considering what action is appropriate.

#### Furnisher Rules —

The Commission is required, in coordination with the banking agencies and NCUA, 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 issued an ANPRM for public comment on March 22, 2006 (71 FR 14419). The comment period closed on May 22, 2006. The agencies have assessed the comments, and hope to publish proposed rules by September 2007.

#### Other Required and Discretionary Actions on Credit Reports and Related Issues —

With respect to credit reports and related issues, the Act requires 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. The agencies expect to publish a risk-based pricing proposal for public comment during 2007. 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 FACT Act requires that the Commission adopt rules concerning identity theft and related issues. Some

of the proceedings are to be conducted jointly (or in consultation) with the banking agencies and the NCUA. The rulemaking mandates are detailed below.

#### Summary of Rights —

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 the proposed summary of consumers' identity theft rights on July 16, 2004 (69 FR 42616). The Commission issued the final model summary on November 30, 2004 (69 FR 69776).

#### Definitions —

FACTA requires the Commission to define certain terms that are relevant to consumers' new identity theft rights ("Identity Theft Definitions Rule") and to promulgate in a rule the length of time for active duty/military alerts. 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 Commission published an Identity Theft Definitions Rule on November 3, 2004 (69 FR 63922).

#### Model Forms and Procedures —

FACTA also requires the Commission in consultation with the banking agencies and the NCUA to develop a model form and procedures to be used by identity theft victims for contacting and informing creditors and consumer reporting agencies of the fraud. On April 27, 2005, the Commission issued notice of its publication of guidance containing such model forms and procedures (70 FR 21792). This guidance, "Take Charge: Fighting Back Against Identity Theft," is available at [www.ftc.gov/bcp/edu/microsites/idtheft](http://www.ftc.gov/bcp/edu/microsites/idtheft) or by writing to FTC, Consumer Response Center, Room 130-B, 600 Pennsylvania Avenue NW, Washington, DC 20580.

#### Red Flags —

The Commission is also required to jointly promulgate with the banking

agencies and the NCUA identity theft "red flag" guidelines and rules to implement these guidelines (the "ID theft red flag rule") and an address change rule (the "address change rule"). The ID theft red flag rule would, among other things, require card issuers to investigate requests for card changes. The address change rule would require credit report users to investigate when the address on a credit report differs from the address on a credit application. The agencies jointly published proposed rules on July 18, 2006 (71 FR 40786). The comment period closed on September 18, 2006. The agencies are reviewing the comments and expect to issue a final rule during 2007.

#### 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 FCRA (69 FR 29061).

#### Timetable:

Action	Date	FR Cite
Joint Interim Final Rules (Effective Date FACT Act Provisions)	12/24/03	68 FR 74467
NPRM (Effective Date FACT Act Provisions)	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
NPRM/Request for Comments (Free Annual Credit File Disclosures)	03/19/04	69 FR 13192
Final Rule (Free Annual Credit File Disclosures)	06/24/04	69 FR 35468
NPRM – Request for Comments (Affiliate Marketing)	06/15/04	69 FR 33324
Comment Period Extended (Affiliate Marketing)	07/21/04	69 FR 43546
NPRM (Prescreen Opt Out Disclosure)	10/28/04	69 FR 58861
Final Rule (Prescreen Opt Out Disclosure)	01/31/05	70 FR 5022

## FTC

## Final Rule Stage

Action	Date	FR Cite	Action	Date	FR Cite	Action	Date	FR Cite
NPRM – Request for Comments (Disposal of Consumer Report Information)	04/20/04	69 FR 21388	Notice of Publication (Guidance for Identity Theft Victims)	04/27/05	70 FR 21792	NPRM Comment	09/18/06	
Final Rule (Disposal of Consumer Report Information)	11/24/04	69 FR 68690	NPRM (Identity Theft Definitions Rule)	04/28/04	69 FR 23370	Interim Final Rule (Affiliate Marketing)	06/00/07	
Effective Date for Disposal Rule	05/01/05		Final Rule (Identity Theft Definitions Rule)	11/03/04	69 FR 63922	NPRM (Risk Based Pricing Rule)	07/00/07	
ANPRM (Credit Score Fees)	11/08/04	69 FR 64698	Effective Date (Identity Theft Definitions Rule)	12/01/04		NPRM (Furnisher Rules)	09/00/07	
Comment Period Ended (Credit Score Fees)	01/05/05		Final Rule (Miscellaneous Technical Amendments)	05/20/04	69 FR 29061	Final Rule (“Red Flags and Address Changes”)	09/00/07	
Proposed Summaries and Notices (Model Disclosures for Identity Theft Rights)	07/16/04	69 FR 42616	ANPRM (Furnisher Accuracy and Dispute Rules)	03/22/06	71 FR 14419	<b>Regulatory Flexibility Analysis Required:</b> No		
Final Action (Model Disclosures for Identity Theft Rights)	11/30/04	69 FR 69776	ANPRM Comment (Period End (“Furnisher Rules”))	05/22/06		<b>Small Entities Affected:</b> Businesses		
Effective Date (Model Disclosures for Identity Theft Rights)	01/31/05		NPRM (Identity Theft “Red Flags” and “Address Changes” Rules)	07/18/06	71 FR 40786	<b>Government Levels Affected:</b> None		
						<b>Agency Contact:</b> Clarke W. Brinckerhoff, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580 Phone: 202 326–3208 Email: cbrinckerhoff@ftc.gov <b>RIN:</b> 3084–AA94		

## Federal Trade Commission (FTC)

## Completed Actions

**3641. 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 3 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 titled “Disclosure Requirements and Prohibitions Concerning Franchising” on August 25, 2004, and published a request for comments which ended on November 11, 2004. 69 FR 53661 (Sept. 2, 2004). The Commission did not review or approve the staff report prior to its issuance.

On January 22, 2007, the Commission announced that it was retaining the Franchise Rule while updating it to account for new technologies and to provide prospective franchisees with more disclosure about the nature of the franchise relationship, while minimizing the discrepancies between Federal and State law. 72 FR 15444 (Mar. 30, 2007). The amended Rule has a phased-in effective date which will be fully effective on July 1, 2008.

**Timetable:**

Action	Date	FR Cite
ANPRM	02/28/97	62 FR 9115
ANPRM Comment Period End	12/31/97	62 FR 28822

## FTC

## Completed Actions

Action	Date	FR Cite
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	
Final Rule	03/30/07	72 FR 15444
Final Rule Effective	07/01/08	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** State

**Agency Contact:** Steven Toporoff, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580

Phone: 202 326-3135

Email: stoporoff@ftc.gov

**RIN:** 3084-AA63

**3642. TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 42 USC 6363(d)

**CFR Citation:** 16 CFR 311

**Legal Deadline:** None

**Abstract:** Issued in 1995, and amended in 2004, this Rule governs labeling of containers for recycled or "re-refined" oil intended for use as engine oil. The rule, which implemented statutory requirements designed to encourage the use of recycled oil, permits manufacturers and other sellers to represent on a recycled engine-oil container label that the oil is substantially equivalent to new engine oil, as long as the determination of equivalency is based on National Institute of Standards and Technology test procedures prescribed by the rule. On July 6, 2006, the Commission published an ANPRM requesting comments on whether to retain or amend the rule (71 FR 38322). The comment period ended on September 5, 2006. The Commission determined to retain the rule in its current form, updating it by incorporating by

reference the American Petroleum Institute Publication 1509, fifteenth edition, and updating incorporation by reference approval language. The final rule became effective upon publication in the Federal Register. 72 FR 14410 (Mar. 28, 2007).

**Timetable:**

Action	Date	FR Cite
ANPRM	07/06/06	71 FR 38322
ANPRM Comment Period End	09/05/06	
Final Rule	03/28/07	72 FR 11410

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**Agency Contact:** Janice Podoll Frankle, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580  
Phone: 202 326-3022  
Email: jfrankle@ftc.gov

**RIN:** 3084-AB06

[FR Doc. 07-01244 Filed 04-27-07; 8:45 am]

**BILLING CODE 6750-01-S**