FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory Priorities

I. REGULATORY PRIORITIES

Background

The Federal Trade Commission (FTC or Commission) is an independent agency charged with protecting American consumers from ''unfair methods of competition'' and ''unfair or deceptive acts or ractices'' in the marketplace. The Commission strives to ensure that consumers benefit from a vigorously competitive marketplace. The Commission's work is rooted in a belief that free markets work — that competition among producers and information in the hands of consumers bring the best products at the lowest prices for consumers, spur efficiency and innovation, and strengthen the economy.

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

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

Industry Self-Regulation and Compliance Partnerships With Industry

The Commission vigorously protects consumers through a variety of tools including both regulatory and non-regulatory approaches. To that end, it has encouraged industry self-regulation, developed a corporate leniency policy for certain rule violations, and established compliance partnerships where appropriate.

The Commission has held workshops and issued reports that encourage industry self-regulation in several areas. As detailed below, privacy, information security, and information sharing continue to be at the forefront of the Commission's consumer protection program:

(a) On November 6-9, 2006, the Federal Trade Commission hosted hearings on ''Protecting Consumers in the Next Tech-ade.'' The FTC plans to bring together experts from the business, government, and technology sectors, consumer advocates, academicians, and law enforcement officials to explore the ways in which convergence and the globalization of commerce impact consumer protection. These hearings will provide an opportunity to examine changes that have occurred in marketing and technology over the past decade, and to garner experts' views on coming challenges and opportunities for consumers, businesses, and governmental bodies.

(b) To encourage better cybersecurity practices, the Commission has partnered with other agencies and organizations to launch a website called OnGuardOnline.gov which provides practical tips from the Federal Government and the technology industry to help consumers be on guard against Internet fraud, secure their computer, and protect their personal information.

(c) The Commission has also undertaken efforts to educate consumers about the risks associated with downloading and using peer-to-peer file-sharing (P2P) software programs. A March 2005 ''Cyber Security Tip'' warns consumers that use of P2P technology presents a number of risks, including the installation of malicious code, exposure of sensitive or personal information, susceptibility of the consumer's computer to attack, and exposure to legal liability. In a June 2005 report, the FTC staff encouraged implementation of industry proposals regarding risk disclosures and will continue to monitor this area. See *Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues Staff Report Federal Trade Commission* (June 2005), available at http://www.ftc.gov/reports/p2p05/050623p2prpt.pdf.

(d) During November 2004, the Commission convened an E-mail Authentication Summit, co-sponsored by the National Institute of Standards at the Commerce Department. Since then, the Commission has been encouraging the development of a compatible authentication standard that would provide accountability for e-mail communication.

(e) The Commission also explored the consumer protection and privacy implications of Radio Frequency Identification (RFID) at a public forum and subsequently published a staff report recommending that industry initiatives that are transparent could play an important role in addressing privacy concerns raised by certain RFID applications. See *RFID: Radio Frequency IDentification: Applications and Implications for Consumers: A Workshop Report From the Staff of the Federal Trade Commission* (March 2005), available at http://www.ftc.gov/os/2005/03/050308rfidrpt.pdf. The report also recommended that industry self-regulatory programs should include meaningful accountability provisions to help ensure compliance.

(f) The Commission held a 2004 public workshop on spyware which when surreptitiously installed on a personal computer, can wreak havoc by highlighting the browser, launching a barrage of pop-up ads, extracting sensitive personal information, or rendering the computer unusable. Following the workshop, the Commission released a staff workshop report concluding in part that industry should develop standards for defining spyware and disclosing information about it to consumers, expand efforts to educate consumers about spyware risks and help law enforcement efforts. See *Spyware Workshop: Monitoring Software On Your Personal Computer: Spyware, Adware, and Other Software Staff Report Federal Trade Commission* (March 2005), available at http://www.ftc.gov/os/2005/03/050307spywarerpt.pdf.

(g) With respect to the Children's Online Privacy Protection Act (COPPA), the Commission has approved the safe harbor programs of four organizations

whose self-regulatory guidelines and programs protect children's privacy to the same or greater extent as COPPA. The organizations with these programs include the Children's Advertising Review Unit of the Council of Better Business Bureaus (CARU), an arm of the advertising industry's self-regulatory program; the Entertainment Software Rating Board (ESRB); TRUSTe, an Internet privacy seal program; and Privo, Inc.

In other areas, like the entertainment industry, the Commission has encouraged industry groups to improve their self-regulatory programs to discourage the marketing to children of violent R-rated movies, Mature-rated electronic games, and music labeled with a parental advisory. The motion picture, electronic game and music industries have each set in place self-regulatory systems that rate or label products in an effort to help parents seeking to limit their children's exposure to violent materials. Since 1999, the Commission has issued five reports on these three industries, examining compliance with their own voluntary marketing guidelines. In 2004, the Commission issued the latest of a series of reports on industry practices. Although the Commission found that violent R-rated movies and M-rated games were still being advertised in media with large teen audiences, the Commission's review reveals that the movie and game industries continue to comply, for the most part, with their self-regulatory limits on ad placement. The recording industry, however, is an example of a less successful self-regulatory attempt. The Commission recommended in its latest report that all three industries continue to improve compliance with existing ad placement guidelines and rating information practices and consider developing ''best practices'' to avoid advertising in venues popular with teen audiences. The reports also examined the extent to which underage consumers can buy rated or labeled products. Even though the movie theater industry has made real progress in this area, and to a lesser extent so have game retailers, the Commission also noted that there remains room for improvement in retailers' practices because the Commission found that teens could still purchase rated or labeled entertainment products at a significant number of stores and theaters. See Federal Trade Commission, *Marketing Violent Entertainment to Children: A Fourth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries A Report to Congress* (July 2004), http://www.ftc.gov/os/2004/07/040708kidsviolencerpt.pdf. Most recently, the Commission has issued consumer education materials to assist parents in understanding video game ratings. The Commission plans to issue another report in this area by the end of 2006.

The Commission has encouraged the actions of three alcohol industry trade associations, the Distilled Spirits Council of the United States, the Beer Institute, and the Wine Institute, to develop and implement voluntary advertising codes governing the placement and content of alcohol advertising. In particular, the Commission continues to encourage companies in the alcohol industry to engage in self-regulation to ensure that advertising for products containing alcohol is not directed at underage youths. The Commission has worked and will continue to work with industry to facilitate compliance with the self-regulatory standards announced in the FTC's report, Federal Trade Commission, *Alcohol Marketing and Advertising A Report to Congress* (Sept. 2003), available at http://www.ftc.gov/os/2003/09/alcohol08report.pdf. However, to ensure that self-regulation is working and whether changes need to be made with those guidelines to ensure their continued viability, the Commission announced in March 2006 that it will be conducting a new study of these alcohol industry self-regulatory programs. The Commission has requested approval from The Office of Management and Budget (OMB) to issue compulsory process orders to leading alcohol companies and request information from advertisers. The OMB clearance process requires that the Commission publish two notices in the Federal Register requesting comments on the proposal. The agency anticipates issuing the orders in Fall 2006 and completing its report in Spring 2007.

The Commission will also launch an alcohol consumer education program, www.dontserveteens.gov, in late Summer 2006. The program communicates the message that responsible adults do not serve alcohol to teens because it is unsafe, irresponsible, and illegal, and it includes a website, television and radio public service announcements and print material to be posted in alcohol retail outlets. Throughout the remainder of 2006 and 2007, the Commission will engage in outreach to promote effective dissemination of this message.

In the weight loss product advertising area, the Commission has consistently proposed a strengthened self-regulatory response from the industry and more media oversight to address the problem of facially false efficacy claims. Specifically, the Commission authorized the release of a media reference guide to assist media in identifying facially false weight-loss advertising. Federal Trade Commission Staff, *Red Flag: A Reference Guide for Media on Bogus Weight Loss Claim Detection* (2003), available at: http://www.ftc.gov/bcp/online/pubs/buspubs/redflag.pdf. The Commission asked the media to refuse to run advertisements that make ''Red Flag'' claims. The media appears to be responding to this challenge, as shown by a follow-up report that analyzed data gathered during 2004. See *2004 Weight Loss Advertising Survey Staff Report Federal Trade Commission* (April 2005), available at http://www.ftc.gov/os/2005/04/050411weightlosssurvey04.pdf. The FTC's survey of weight loss advertisements found that the number of ads with red flag claims had fallen from almost 50% to 15%. In addition, the FTC has encouraged a joint effort by the Electronic Retailing Association and the Better Business Bureau's National Advertising Review Council to develop a self-regulatory program that could promptly address deceptive infomercial claims.

To address concerns about the nation's growing childhood obesity problem, the Commission and the Department of Health and Human Services (HHS) released a report during 2006 recommending concrete steps that industry can take to change their marketing and other practices to make progress against childhood obesity. See *Perspectives On Marketing, Self-Regulation, & Childhood Obesity: A Report on a Joint Workshop of the Federal Trade Commission and the Department of Health and Human Services* (April 2006) (materials available at http://www.ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation%26ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf). This report was the product of a joint FTC-HHS workshop in June 2005 that brought together a wide range of speakers to examine ways, including self-regulation, to promote competition among food manufacturers to produce and promote healthier food choices for children (materials are available at http://www.ftc.gov/bcp /workshops/foodmarketingtokids/). The 2006 Report

noted that the current Children's Advertising Review Unit (CARU) Guides are a good foundation for industry self-regulation, but the agencies recommended that the Guides be expanded and their enforcement enhanced. The Report noted that both agencies plan to monitor closely progress on these recommendations.

Finally, the Commission continues to apply the Textile Corporate Leniency Policy Statement for minor and inadvertent violations of the Textile or Wool Rules that are self-reported by the company. 67 FR 71566 (Dec. 2, 2002). Generally, the purpose of the Textile Corporate Leniency Policy is to help increase overall compliance with the rules while also minimizing the burden on business of correcting (through relabeling) inadvertent labeling errors that are not likely to cause injury to consumers. Since the Textile Corporate Leniency Program was announced, 89 companies have been granted ''leniency'' for self-reported minor violations of FTC textile regulations.

The Commission also has engaged industry in compliance partnerships in at least two areas involving the funeral and franchise industries. Specifically, the Commission's Funeral Rule Offender Program, conducted in partnership with the National Funeral Directors Association, is designed to educate funeral home operators found in violation of the requirements of the Funeral Rule, 16 CFR part 453, so that they can meet the rule's disclosure requirements. Approximately 234 funeral homes have participated in the program since its inception in 1996. In addition, the Commission established the Franchise Rule Alternative Law Enforcement Program in partnership with the International Franchise Association (IFA), a nonprofit organization that represents both franchisors and franchisees. This program is designed to assist franchisors found to have a minor or technical violation of the Franchise Rule, 16 CFR part 436, in complying with the rule. Violations involving fraud or other section 5 violations are not candidates for referral to the program. The IFA teaches the franchisor how to comply with the rule and monitors its business for a period of years. Where appropriate, the program will offer franchisees the opportunity to mediate claims arising from the law violations. Since December 1998, 18 companies have agreed to participate in the program.

Rulemakings and Studies Required by Statute

In 2003, the Congress enacted several laws requiring the Commission to undertake rulemakings and studies. These include at least 14 new rulemakings and eight studies required by the Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159 (FACTA or the FACT Act); the rulemakings and reports required by the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. No. 108-187 (CAN-Spam Act); and the rulemaking pursuant to the Federal Deposit Insurance Corporation Improvements Act of 1991, Pub. L. 102-242. These rulemakings are proceeding and are described more extensively in the Unified Agenda. The Final Actions section below describes any final actions taken on these rulemakings.

On August 8, 2005, the President signed the Energy Policy Act of 2005 which required the Commission to complete two rulemakings while authorizing other discretionary rulemaking actions. Pursuant to this statute, the Commission was required to initiate a rulemaking within 90 days of enactment examining the effectiveness of the energy efficiency related consumer product labeling program. Further, the Commission was required to complete this rulemaking within two years of enactment. The statute also required the Commission to issue labeling requirements for ceiling fans concerning the electricity used by the fans to circulate air in a room. The rulemakings for appliance labeling effectiveness and for ceiling fan labeling are proceeding according to schedule. The statute also amended the statutory definitions of some covered lighting products that may require the Commission to make conforming amendments to the current rule. The statute also authorizes the Commission or the Secretary of the Department of Energy (DOE), as appropriate, to require labels for a number of products. The Commission and DOE are consulting about how to proceed in this area. Another section of the Act gives the Commission discretionary authority to issue retail electricity rules related to slamming (unauthorized account switches), cramming (unauthorized charges), and privacy.

The Energy Policy Act of 2005 also required the Commission to conduct an investigation to determine if the price of gasoline was being artificially raised by reducing refinery capacity or by any other form of market manipulation or price gouging practices. In addition, in Section 632 of the Commission's appropriations legislation for fiscal year 2006, Congress directed the Commission to investigate nationwide gasoline prices and possible price gouging in the aftermath of Hurricane Katrina. Because the issues raised by these two statutory commands were closely related, the Commission conducted a single investigation in response to these directives. On May 11, 2006, the Commission issued a report entitled ''Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases'', which can be found at http://www.ftc.gov/reports/060518PublicGasolinePrices InvestigationReportFinal.pdf. In its investigation, the FTC found no instances of illegal market manipulation that led to higher prices during the relevant time periods but found 15 examples of pricing at the refining, wholesale, or retail level that fit the relevant legislation's definition of evidence of ''price gouging.'' Other factors such as regional or local market trends, however, appeared to explain these firms' prices in nearly all cases. Further, the report reiterated the FTCs position that federal gasoline price gouging legislation, in addition to being difficult to enforce, could cause more problems for consumers than it solves, and that competitive market forces should be allowed to determine the price of gasoline drivers pay at the pump.

Other New Regulatory Activities

After issuing a staff advisory opinion indicating that the Commission's current Guides for Jewelry, Precious Metals and Pewter Industries, 16 CFR part 23, did not address descriptions of new platinum alloy products, the Commission issued a Request for Public Comments on whether the platinum section of the Guides for Jewelry, Precious Metals and Pewter Industries, should be amended to provide guidance on how to non-deceptively mark or describe products containing between 500 and 850 parts per thousand pure platinum and no other platinum group metals. 70 FR 38834 (July 6, 2005). After an extension, the comment period closed on October 12, 2005. Staff is reviewing the comments and expects to make recommendations to the Commission by the end of 2006.

Ten-Year Review Program

In 1992, the Commission implemented a program to review its rules and guides regularly. The Commission's review program is patterned after provisions in the

Regulatory Flexibility Act, 5 USC 601-612. Under the Commission's program, rules have been reviewed on a ten-year schedule as resources permit. For many rules, this has resulted in more frequent reviews than is generally required by section 610 of the Regulatory Flexibility Act. This program is also broader than the review contemplated under the Regulatory Flexibility Act, in that it provides the Commission with an ongoing systematic approach for seeking information about the costs and benefits of its rules and guides and whether there are changes that could minimize any adverse economic effects, not just a ''significant economic impact upon a substantial number of small entities.'' 5 USC 610. The program's goal is to ensure that all of the Commission's rules and guides remain in the public interest. It complies with the Small Business Regulatory Enforcement Act of 1996, Pub. L. 104-121. This program is consistent with the Administration's ''smart'' regulation agenda to streamline regulations and reporting requirements and Section 5(a) of Executive Order 12866, 58 FR 51735 (Sept. 30, 1993).

As part of its continuing ten-year review plan, the Commission examines the effect of rules and guides on small businesses and on the marketplace in general. These reviews often lead to the revision or rescission of rules and guides to ensure that the Commission's consumer protection and competition goals are achieved efficiently and at the least cost to business. In a number of instances, the Commission has determined that existing rules and guides were no longer necessary nor in the public interest. As a result of the review program, the Commission has repealed 48 percent of its trade regulation rules and 57 percent of its guides since 1992.

Calendar Year 2005-06 Reviews

Most of the matters currently under review pertain to consumer protection and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions. During early 2006, the Commission announced its ten-year schedule of review and that it would initiate the review of two rules and one guide during 2006: (1) the Test Procedures and Labeling Standards for Recycled Oil Rule (the Recycled Oil Rule), 16 CFR part 311, (2) the Used Motor Vehicle Trade Regulation Rule (the Used Motor Vehicle Rule), 16 CFR part 455, and (3) Guides for the Nursery Industry (the Nursery Guides), 16 CFR part 18. 70 FR 77077 (Dec. 29, 2005). For the Recycled Oil Rule, the Commission requested comments on July 6, 2006, on whether to retain or amend the Rule. 71 FR 38322. The notice asked nine specific questions about the rule that the public may wish to address. The comment period ended on September 5, 2006, and staff plans to forward its recommendation to the Commission in early 2007. For the Used Motor Vehicle Rule, staff anticipates that the Commission will issue a request for comments on whether to retain or amend the Rule by early 2007. Finally, the Commission plans to issue a similar request for comments relating to the Nursery Guides by the end of 2006.

Ongoing Reviews

The Commission staff is continuing its review of several rules and guides. First, for the Telemarketing Sales Rule (TSR), 16 FR part 310, the Commission published an NPRM on November 17, 2004, proposing to allow prerecorded messages in certain defined situations, seeking comments regarding a possible change in the method used to calculate the percentage of abandoned calls, and announcing the agency's forbearance from enforcing the Commission's current call abandonment provisions against callers who engage in prerecorded message telemarketing as long as they complied with the proposed change. 69 FR 67287. The comment period ended on January 10, 2005. On October 4, 2006, the Commission issued a revised NPRM concerning these issues. 71 FR 58716. The revised and extended comment period ends on December 18, 2006. 71 FR 65762. The Commission proposes making explicit that the TSR prevents 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 NPRM also proposes to change the method for measuring the maximum allowable call abandonment rate in the call abandonment safe harbor provision from ''3% per day per calling campaign'' to ''3% per 30-day period per calling campaign.'' The Commission also announced that the Commission will no longer forbear after January 2, 2007, from initiating enforcement actions for violations of the TSR's call abandonment provision against companies that use prerecorded messages.

Second, in the review of the Franchise Rule, 16 CFR part 436, the Commission announced on August 25, 2004, the issuance of a staff report, *Disclosure Requirements and Prohibitions Concerning Franchising,* which summarizes the rulemaking record to date, analyzes the various alternatives, and sets forth the staff's recommendations to the Commission on the various proposed amendments to the Franchise Rule, 69 FR 53661 (Sept. 2, 2004). The Commission did not review or approve the staff report. Among other things, staff proposes that the Commission retain 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. Public comments were accepted until November 12, 2004. Staff is reviewing the comments and anticipates sending its recommendation to the Commission by Fall 2006.

Third, the proposed Business Opportunities Rule stems from the ongoing review of the Franchise Rule, where staff recommended that the Franchise Rule be split into two parts; one part addressing franchise issues and one part addressing business opportunity issues. Thereafter, the Commission published an NPRM seeking comments on the proposed Business Opportunities Rule. 71 FR 19054 (Apr. 12, 2006). This proposed rule would address 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 NPRM comment period ended on July 17, 2006, and the rebuttal comment period was extended to September 29, 2006. Staff anticipates publishing a report by the end of 2007.

Fourth, for the rulemakings on the Fair and Accurate Credit Transactions Act of 2003 (FACTA), the Commission has three active proposals, including:

(A) Furnisher Rules—The Commission, in coordination with the banking agencies and the National Credit Union Administration, issued an ANPRM for proposed 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. 71 FR 14419 (Mar. 22, 2006). The comment period closed on

May 22, 2006, and the agencies are now assessing the comments.

(B) Identity Theft Red Flags Rules—The Commission and the banking agencies jointly published proposed rules that 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. 71 FR 40786 (Jul. 18, 2006). The comment period closed on September 18, 2006, and the agencies are reviewing the comments.

(C) Risk Based Pricing Rule—The Commission jointly with the Federal Reserve expects to publish a risk-based pricing proposal for comment by the end of 2006. This statutorily-required rulemaking would address the form, content, time, manner, definitions, exceptions, and model of a risk-based pricing notice.

Fifth, for the Hart-Scott-Rodino Premerger Notification Rules (HSR Rules), Bureau of Competition staff is continuing to review various HSR Rule provisions. Staff anticipates sending its recommendation to the Commission by Fall 2007.

Sixth, for the Rules on the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the CAN-SPAM Act Rules), the Commission issued an NPRM on May 12, 2005, that proposed rule provisions on five discretionary 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 ten days to three 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 anticipates sending a final recommendation to the Commission by late 2006.

Seventh, for the rulemaking on Privacy of Consumer Financial Information, 16 CFR part 313, the Commission and banking agencies published an ANPRM and requested public comments on a variety of subjects including the goals, language, and mandatory or permissible aspects of privacy notices. 68 FR 75164 (Dec. 30, 2003). Since the issuance of rules in 2000 in accordance with the Gramm-Leach-Bliley Act, 15 USC 6801 et seq., which requires that financial institutions provide notice of their privacy policies to their customers, the agencies have been trying to develop more useful privacy notices to consumers. The comment period for the ANPRM ended on March 26, 2004. Staff for the seven agencies are jointly funding consumer research and testing to inform the development of alternative privacy notices that are easier for consumers to understand and use.

Eighth, the Commission's review of the Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Smokeless Regulations), 16 CFR part 307, is ongoing. The Smokeless Regulations govern the format and display of statutorily-mandated health warnings on all packages and advertisements for smokeless tobacco. In fiscal year 2000, the Commission undertook its periodic review of the Smokeless Regulations to determine whether the Regulations continue to effectively meet the goals of the Act and to seek information concerning the Regulations' economic impact in order to decide whether they should be amended. Staff is currently assessing the public comments and anticipates forwarding its recommendations to the Commission in 2007.

Ninth, the Commission began its regulatory review of certain aspects of the Funeral Industry Practices Rule (Funeral Rule), 16 CFR part 453, in 1999. The Funeral Rule, which became effective in 1984, and was amended in 1994, requires providers of funeral goods and services to give consumers itemized lists of funeral goods and services that state prices and descriptions and also contain specific disclosures. The rule enables consumers to select and purchase only the goods and services they want, except for those that may be required by law and a basic services fee. Also, funeral providers must seek authorization before performing some services, such as embalming. In addition to an assessment of the rule's overall costs and benefits and continuing need for the rule, the review will examine whether changes in the funeral industry warrant broadening the scope of the rule to include non-traditional providers of funeral goods or services and revising or clarifying certain prohibitions in the rule. *See* 64 FR 24250 (May 5, 1999). A public workshop conference was subsequently held to explore issues raised in the comments submitted. Staff expects to forward its recommendation to the Commission by April 2007.

Finally, the Commission's review of the Pay-Per-Call Rule, 16 CFR part 308, is continuing. The Commission has held workshops to discuss proposed amendments to this rule, including provisions to combat telephone bill ''cramming''—inserting unauthorized charges on consumers' phone bills—and other abuses in the sale of products and services that are billed to the telephone including voicemail, 900-number services, and other telephone-based information and entertainment services. The most recent workshop focused on discussions of the use of 800 and other toll-free numbers to offer pay-per-call services, the scope of the rule, the dispute resolution process, the requirements for a pre-subscription agreement, and the need for obtaining express authorization from consumers before placing charges on their telephone bills. The review record has remained open to encourage additional comments on questions related to expansion of the rule's coverage. Staff anticipates forwarding its recommendation to the Commission by April 2007.

In addition, during 2007, the Commission anticipates issuing separate notices requesting comments both on the Statement of General Policy or Interpretations under the Fair Credit Reporting Act (also known as FCRA Commentary) and for the Guides Concerning the Use of Endorsements and Testimonials in Advertising.

Final Actions

Since publication of the 2005 Regulatory Plan, the Commission has taken final actions on several rulemakings. First, on March 8, 2005, the Commission concluded its regulatory review of the Children's Online Privacy Protection Rule (COPPA Rule), 16 CFR part 312, by retaining COPPA without any changes. 71 FR 13247 (Mar. 15, 2006). Congress required this review be completed within five years of the effective date of the implementation of the rule, and that it include assessment of: (1) the effect on practices relating to the collection

and disclosure of information relating to children; (2) children's ability to obtain access to information of their choice online; and (3) the availability of web sites directed to children. The public comments received during the review uniformly stated that COPPA has provided greater protection to children's personal information online, that there is a continuing need for the Rule, and that the Rule should be retained. Specifically, many commenters emphasized that the Rule provides web site operators with a clear set of standards to follow and that operators have received few, if any, complaints from parents about the standards and how they are implemented. The FTC plans to submit to the Congress in late 2006 an assessment of COPPA's implementation, including a discussion of the three issues noted above.

Second, for the HSR Rules, the Commission most recently issued a Final Rule to allow filing parties the option for the electronic submission via the Internet of Premerger Notification and Report Forms. 71 FR 35995 (Jun. 23, 2006). This rule was effective upon publication. The Commission also issued three other HSR-related Final Rules: (1) allowing filing parties to provide Internet links to certain documents instead of paper copies, effective on January 11, 2006, 70 FR 73369; (2) clarifying that ''stale filings'' expire eighteen months after they are received by the Agencies, 70 FR 73369; & (3) requiring all filers to use 2002 NAICS data and codes (replacing 1997 codes and revenue information) beginning January 30, 2006. 70 FR 77312.

Finally, with respect to the TSR Rules, the Commission also published an NPRM concerning a revised fee structure for the National Do-Not-Call Registry on May 1, 2006. 71 FR 25512. The comment period ended on June 1, 2006. The Commission published final fee changes for the National Do-Not-Call Registry on July 31, 2006, with an effective date of September 1, 2006. 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.

Summary

In both content and process, the FTC's ongoing and proposed regulatory actions are consistent with the President's priorities. The actions under consideration inform and protect consumers and reduce the regulatory burdens on businesses. The Commission will continue working toward these goals. The Commission's ten-year review program is patterned after provisions in the Regulatory Flexibility Act and complies with the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission's ten-year program also is consistent with section 5(a) of Executive Order 12866, 58 FR 51735 (Sept. 30, 1993), which directs executive branch agencies to develop a plan to reevaluate periodically all of their significant existing regulations. In addition, the final rules issued by the Commission continue to be consistent with the President's Statement of Regulatory Philosophy and Principles, Executive Order 12866, section 1(a), which directs agencies to promulgate only such regulations as are, *inter alia,* required by law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public.

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

Rulemakings that Respond to Public Regulatory Reform Nominations

During March 2002, OMB requested public nominations for regulatory reforms. The Office of Information and Regulatory Affairs (OIRA) conducted a preliminary review of the public comments received and found five FTC activities that one or more commenters had nominated for reform. In a March 7, 2003 letter, the FTC responded that the agency systematically reviews all regulations and guides on a ten-year basis and explained how the agency had already reviewed or was about to review the activity at issue or why some of the other activities were not good candidates for reform as contemplated by the Smarter Regulations Report. In 2004, OIRA requested recommendations for reform in the manufacturing sector. OIRA received two nominations for FTC action but determined not to include them in the Report to Congress on agency responses to reform nominations in the manufacturing sector.[1]

II. REGULATORY ACTIONS

The Commission does not plan to propose any rules that would be a ''significant regulatory action'' under the definition in Executive Order 12866.

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[1] The two nominations were 1) a comment concerning the DOE and FTC requirements for reporting water usage (the FTC's response indicated that the agencies have accepted the requested data based on third party reports since 1993); and 2) a comment that the DOE, FTC and EPA should work with industry to streamline duplicative energy labels (the FTC's response noted that since 2000, where appropriate, manufacturers have been allowed to place the Energy Star logo on EnergyGuide Labels and noted that the two labels provide different information to the consumer).