

**Federal Trade Commission
Regulatory Review Plan:
Ensuring FTC Rules Are Up-to-Date, Effective, and Not Overly Burdensome
September 2011**

I. Executive Summary of Regulatory Review Plan

The Federal Trade Commission (“FTC”) has long recognized the many benefits of periodic regulatory review. In a rapidly changing marketplace, agency regulations can become outdated, ineffectual, and unduly burdensome. Therefore, it is important to systematically review regulations to ensure that they continue to achieve their intended goals without unduly burdening commerce. Since 1992, the FTC’s regulatory review program has done just that. The FTC schedules its regulations and guides for review on a ten-year cycle; i.e., all rules and guides are scheduled to be reviewed ten years after implementation and ten years after completion of a regulatory review. Pursuant to this program, the FTC has rescinded 37 rules and guides promulgated under the FTC’s general authority and updated dozens of other since the early 1990s. In all, the FTC has repealed roughly half of its discretionary trade regulatory rules and industry guides that were in effect when the program began in 1992.

The President recently issued Executive Orders 13563 and 13579, which call upon federal agencies including independent agencies such as the FTC, to prepare plans for the periodic review of existing regulations in order to determine whether those regulations should be modified, streamlined, expanded, or repealed.

The FTC shares these goals and, in light of the Executive Orders, has taken a fresh look at its longstanding regulatory review process. The FTC is taking a number of steps to ensure that its rules and guides are up-to-date and effective, ease burdens on business, and promote public engagement in its regulatory review program:

- The FTC recently issued a revised ten-year review schedule and accelerated the review of a number of rules and guides in response to recent changes in technology and the marketplace. ***More than a third of the FTC’s 66 rules and guides will be under review, or will have just been reviewed, by the end of 2011.***
- The FTC is requesting public comment on the effectiveness of its regulatory review program and suggestions for improvement.
- The FTC has launched a web page that serves as a one-stop shop to allow the public to obtain information and provide comments on individual rules and guides under review as well as the FTC’s regulatory review program generally.
- As a result of its retrospective review program, the FTC, working with the U.S. Department of Justice, has revised the Hart-Scott-Rodino Transmittal Rule and streamlined the premerger notification form pages from 15 to 10 to reduce the filing burden on companies seeking merger approval. The changes should reduce the time required to prepare responses for filings, with an estimated net reduction of 2 hours and \$920 in labor costs per filing.

II. Scope of Regulatory Review Plan

The FTC's regulatory review plan covers all of the agency's existing regulations and industry guides. The agency administers and enforces 15 "trade regulation rules" authorized by the FTC Act and 35 rules authorized by other statutes. In addition, the FTC currently publishes 16 industry guides to assist businesses in understanding their compliance obligations. The guides identify practices that the FTC considers unfair or deceptive under Section 5 of the FTC Act and help clarify the line between deceptive and legitimate conduct, thereby giving greater certainty to businesses.

III. Rules for Retrospective Review

The following table lists the rules and guides that are scheduled for review in the next two years, as well as rules and guides that are currently under review. The complete list of reviews scheduled over the next 10 years is available at <http://www.ftc.gov/ftc/regreview/rev-schedule.pdf>.

16 C.F.R. PART	TOPIC	YEAR TO REVIEW
254	Guides for Private Vocational and Distance Education Schools	Under Review
259	Guide Concerning Fuel Economy Advertising for New Automobiles	Under Review
260	Guides for the Use of Environmental Marketing Claims	Under Review
306	Automotive Fuel Ratings, Certification and Posting Rule	Under Review
308	Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 [Pay Per Call Rule]	Under Review
309	Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles Rule	Under Review
312	Children's Online Privacy Protection Rule	Under Review
423	Care Labeling of Textile Wearing Apparel and Certain Piece Goods Rule	Under Review
425	Use of Prenotification Negative Option Plans Rule	Under Review
429	Rule Concerning the Cooling-Off Period for Sales Made at Homes or at Certain Other Locations	Under Review

16 C.F.R. PART	TOPIC	YEAR TO REVIEW
435	Mail or Telephone Order Merchandise Rule	Under Review
437	Disclosure Requirements and Prohibitions Concerning Business Opportunities Rule	Under Review
455	Used Motor Vehicle Trade Regulation Rule	Under Review
239	Guides for the Advertising of Warranties and Guarantees	Under Review
300	Rules and Regulations under the Wool Products Labeling Act of 1939	2011
301	Rules and Regulations under Fur Products Labeling Act	2011
303	Rules and Regulations under the Textile Fiber Products Identification Act	2011
424	Retail Food Store Advertising and Marketing Practices Rule [Unavailability Rule]	Under Review
700	Interpretations of Magnuson-Moss Warranty Act	Under Review
701	Disclosure of Written Consumer Product Warranty Terms and Conditions	Under Review
702	Pre-Sale Availability of Written Warranty Terms	Under Review
703	Informal Dispute Settlement Procedures	Under Review
801	[Hart-Scott-Rodino Antitrust Improvements Act] Coverage Rules	2011
20	Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry	2012
23	Guides for the Jewelry, Precious Metals, and Pewter Industries	2012
233	Guides Against Deceptive Pricing	2012
238	Guides Against Bait Advertising	2012
251	Guide Concerning Use of the Word “Free” and Similar Representations	2012

16 C.F.R. PART	TOPIC	YEAR TO REVIEW
240	Guides for Advertising Allowances and Other Merchandising Payments and Services	2012
305	Appliance Labeling Rule	2012
433	Preservation of Consumers' Claims and Defenses Rule [Holder in Due Course Rule]	2012
310	Telemarketing Sales Rule	2013
500	Regulations under Section 4 of the Fair Packaging and Labeling Act	2013
501	Exemptions from Requirements and Prohibitions under Part 500 [of the Fair Packaging and Labeling Act]	2013
502	Regulations under Section 5(c) of the Fair Packaging and Labeling Act	2013
503	Statements of General Policy or Interpretation [under the Fair Packaging and Labeling Act]	2013
802	[Hart-Scott-Rodino Antitrust Improvements Act] Exemption Rules	2013

IV. Public Access, Participation, and Publishing the Plan Outline

The FTC's comprehensive regulatory review program is designed to foster public input and participation. Each year, the FTC publishes in the Federal Register a notice informing the public of the FTC's intent to seek public comment on the rules and industry guides scheduled for review in the coming year. This notice also provides information regarding the FTC's long-term regulatory review schedule, including whether the review of certain rules or industry guides has been accelerated or postponed. Then, when initiating regulatory review of individual rules and guides, the FTC publishes a separate Federal Register notice seeking comment on the efficiency of the rule or guide and the potential need for revisions.

For the first time, the FTC is seeking public comments on ways it can improve its regulatory review process to better serve consumers and businesses. The FTC wants to hear from the public about all aspects of its regulatory review process, including how often it should review rules and guides and how it can modify its regulatory review program to make it more responsive to the needs of interested parties. To that end, the FTC published a notice on July 13, 2011, in the Federal Register seeking public input on its regulatory review plan. The public can comment on the FTC's

plan at <https://ftcpublic.commentworks.com/ftc/RegulatoryReviewSchedule/>. All public comments will be available on the FTC's website.

To further increase transparency, public understanding, and participation in its regulatory review process, the FTC has launched a new web page on ftc.gov that serves as a central clearinghouse for information regarding the program. The FTC Regulatory Review page provides the public with: (1) easy access to the FTC's ten-year schedule of regulatory reviews, (2) links to comment on rules that are under review, (3) a link for direct feedback on the FTC's regulatory review program, (4) a list of rules and guides that have been eliminated over the years, (5) information about the newly streamlined premerger notification form, and (6) other news and information regarding the FTC's regulatory review program.

The FTC's regulatory proceedings are designed to foster public participation and promote open exchanges of information among interested parties. Under the requirements of the Administrative Procedure Act and other relevant statutes, the FTC seeks public comment on proposed rules and industry guides and provides ample opportunity for public participation in the regulatory process. The FTC also reaches out to stakeholders through other means to ensure an open exchange of ideas during rulemakings. For example, the FTC uses workshops and conferences in its rulemaking and rule amendment proceedings, and in other contexts, to obtain valuable input from small businesses and other industry members, consumers, federal and state law enforcement agencies, and other experts and interested parties as well as to gather information regarding the benefits and costs of its enforcement and regulatory programs. These workshops and conferences also help to educate industry members about their legal responsibilities and their role in the regulatory and enforcement processes. The FTC also actively participates in Regulatory Enforcement Fairness ("RegFair") programs sponsored by the Small Business Administration that give small businesses a forum to comment directly on the enforcement and compliance activities of federal agencies.

In addition, the FTC engages in an extensive program of consumer and business education and outreach to further the effectiveness of its regulatory programs. For example, the FTC publishes business compliance guidance, policy statements, and staff advice regarding the rules and laws it administers, which help small businesses and industry members understand their responsibilities under the law and are available on the FTC's website. The FTC staff also responds to informal business inquiries and meets regularly with industry groups to answer questions and promote voluntary compliance.

V. Current agency efforts underway independent of Executive Order 13579

As noted in the executive summary above, in 1992 the FTC adopted a comprehensive regulatory review program that provides for retrospective review of all its rules and industry guides over the course of a ten-year cycle. The review schedule is available in Section III above.

In recent years, the FTC has accelerated review of three rules and a guide to account for changes in the marketplace and to reduce burdens on industry. Specifically, because of recent increases in the use of environmental marketing claims, in 2009 the FTC accelerated review of its

Guides for the Use of Environmental Marketing Claims, also known as the Green Guides, 16 C.F.R. Part 260. In 2010, the FTC accelerated its reviews of the Children’s Online Privacy Protection Rule, 16 C.F.R. Part 312, to address rapid changes in technology and children’s use of online media. The FTC also accelerated review of the Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles (“Alternative Fuels Rule”), 16 C.F.R. Part 309, to address potentially unnecessary or duplicative labeling requirements and to harmonize FTC rules with the rules of a sister agency. And most recently, the FTC announced a new Premerger Notification and Report Form, which was the result of an acceleration in 2010 of the review of the Hart-Scott-Rodino Antitrust Improvements Act (“HSR”) Transmittal Rule, 16 C.F.R. Part 803, to more rapidly alleviate any unnecessary burden on merger filers during these difficult economic times.

On July 7, 2011, the FTC announced it was accelerating review of additional rules. First, the FTC is accelerating its review of portions of the HSR Coverage Rule, 16 C.F.R. Part 801, from 2013 to 2011. Second, the FTC is accelerating review of the Appliance Labeling Rule, 16 C.F.R. Part 305, from 2018 to 2012, to address rapid changes in appliance technology and the increasing cost of energy. Of the 13 rules and guides originally scheduled to be reviewed in 2011, the FTC is postponing review of four of them due to resource constraints resulting from the acceleration of other reviews, and because FTC staff has determined that there is no pressing need for review this year.

VI. Elements of Regulatory Review Plan and Components of Retrospective Analysis

A. Overview of Retrospective Review

The FTC’s robust and long-standing regulatory review program provides for retrospective review of all its rules and industry guides ten years after implementation of each rule or guide and ten years after completion of a regulatory review. Experienced, senior agency officials in the FTC’s Bureau of Consumer Protection manage and oversee this program, which is designed to provide the FTC with information regarding whether there is a continued need for the rules and guides under review and whether revisions or modifications could benefit consumers and industry. The regulatory review program also covers the Hart-Scott-Rodino rules that implement the premerger review program.

When the FTC reviews a rule or guide, it publishes a notice in the Federal Register seeking public comment. This notice asks all interested parties to comment on the continuing need for the regulation or guide as well as its costs and benefits, both to consumers and businesses. Additionally, the FTC asks whether current or impending technological or economic changes affect the need for, or require modification of, the regulation or guide and whether the regulation or guide conflicts with state, local, or other federal law. The FTC also asks specific questions about how the rule or guide can be improved and for data, studies, or other evidence to support the commenter’s recommendation. Typically, the FTC receives substantive comments from businesses, trade associations, consumer and other public interest groups, state law enforcement, individual consumers, and other interested stakeholders. It also often holds workshops at which interested parties can provide relevant information and express their views to the FTC staff and respond to the view of others.

Using this feedback, the FTC determines whether there is continuing need for the rule or guide, and, if so, whether it still serves its intended purpose without unduly burdening commerce. After Commission staff analyze the comments and make a recommendation to the Commission, the Commission either initiates a proceeding to modify or repeal the regulation or guide in question, or determines no changes are warranted.

If the FTC determines that a rule should be modified, it issues either an Advance Notice of Proposed Rulemaking or a Notice of Proposed Rulemaking, in which it summarizes the public comments, sets forth the proposed modifications, explains the costs and benefits of the proposed modifications and why they are justified, and seeks additional public comment. At the same time, it also publishes a burden estimate under the Paperwork Reduction Act and seeks comment on that estimate. The FTC actively looks for means to reduce burden while preserving the effectiveness of a rule. For example, as part of its ongoing review of the Business Opportunity Rule, 16 C.F.R. Part 437, the FTC approved issuance of a Staff Report recommending changes designed to significantly decrease the disclosure burdens on covered sellers of business opportunities, reducing the categories of information they must provide from 23 to five.

B. Use of Rigorous Consumer Surveys and Technological Information

The FTC relies upon rigorous consumer surveys and technological information in formulating its regulatory initiatives and industry guidance. To that end, the FTC conducts consumer surveys and advertising copy tests in connection with some consumer protection rulemakings and guidance to evaluate consumer reaction to, and understanding of, marketing claims and required disclosures. For example, the FTC conducted a study to assess consumer comprehension of its labeling mandates for appliances and light bulbs under the Appliance Labeling Rule. The economists in the FTC's Bureau of Economics have substantial expertise in the use of survey methodology and assist Bureau of Consumer Protection staff in assessing the impact of marketing claims on consumers and evaluating the effectiveness of potential disclosure obligations in preventing deceptive practices.

The FTC also uses industry-leading consumer research firms, like Harris Interactive Inc. and Synovate, to perform consumer surveys to ensure the effectiveness of its regulatory and industry guidance programs. For example, the FTC commissioned a study by Harris Interactive Inc. to help ensure that the FTC, in its ongoing review of the "Green Guides," can appropriately respond to any changes in consumers' perception of environmental marketing claims. The FTC has also used consumer surveys in its efforts to address important consumer protection issues such as the prevalence of identity theft and consumer fraud. In addition, the FTC relies on technical information received from industry, consumers, academics and non-governmental organizations.

Moreover, the FTC works with other expert agencies to ensure its regulatory and industry guidance programs are based on robust scientific and technical information. For example, the Appliance Labeling Rule's disclosure requirements, which help consumers compare similar appliance models by requiring manufacturers to disclose energy usage information, are derived from U.S. Department of Energy ("DOE") test procedures. The Rule also allows manufacturers to place the U.S. Government ENERGY STAR logo, a joint program of the U.S. Environmental Protection

Agency (“EPA”) and DOE, on EnergyGuide labels for qualified products to ease burdens on businesses and provide consumers with additional information to facilitate product comparisons. By leveraging the expertise of other expert agencies and harmonizing regulatory requirements, the Rule facilitates consumer choice without imposing conflicting mandates on industry.

C. Harmonization with other federal agencies

The FTC works with other federal agencies to harmonize rules and avoid duplicative or conflicting requirements. For example, in connection with its rule concerning the Alternative Fuels Rule, the FTC recently issued an enforcement policy to “help eliminate consumer confusion and industry burden caused by inconsistent FTC and [EPA] requirements for cruising range disclosures” for electric vehicles. Specifically, the FTC announced it would forbear from enforcing current FTC labeling requirements for electric vehicles (including plug-in hybrid electric vehicles) that are labeled in accordance with EPA requirements. The FTC is also accelerating review of the Alternative Fuels Rule to help ensure harmonization of the two agencies’ regulations.

As noted above, the FTC has also worked to harmonize its Appliance Labeling Rule with the regulatory programs of other federal agencies. The Rule allows manufacturers to provide energy usage information derived from established DOE test procedures and display the ENERGY STAR logo, developed jointly by the EPA and DOE, on qualified products. As a result, the Rule helps ensure that consumer can make informed purchasing decisions, while avoiding duplicative regulatory requirements and easing compliance burdens on regulated manufacturers.

VII. Conclusion

Comprehensive regulatory review has long been a key priority for the FTC. In the spirit of Executive Orders 13563 and 13579, the FTC is pleased to reiterate its continuing commitment to regulatory reform and introduce new initiatives to help ensure the effectiveness of its regulatory programs and industry guidance while minimizing burdens for U.S. businesses.