

## **FEDERAL TRADE COMMISSION (FTC)**

### **Statement of Regulatory and Deregulatory Priorities**

#### **I. Regulatory and Deregulatory Priorities**

##### *Background*

The Federal Trade Commission (FTC or Commission) is an independent agency charged by its enabling statute, the Federal Trade Commission Act (FTC Act), with protecting American consumers from “unfair methods of competition” and “unfair or deceptive acts or practices” in the marketplace. The Commission strives to ensure that consumers benefit from a competitive marketplace. The Commission’s work is rooted in a belief that competition, based on truthful and non-misleading information about products and services, provides consumers the best choice of products and services at the lowest prices.

The Commission pursues its dual mission through two different but complementary approaches. Through its consumer protection activities, the Commission seeks to ensure that consumers receive accurate, truthful, and non-misleading information to inform their choices in the marketplace. At the same time, the Commission also polices the marketplace for anticompetitive business practices that harm the competitive process, as well as anticompetitive mergers that are likely to result in higher prices, lower quality, less innovation, or other harms to consumer welfare. These two complementary missions make the Commission unique; it is the nation’s only Federal agency with this combination of statutory authority to promote competition and protect consumers.

The Commission is charged with responsibility for issuing and enforcing regulations under a number of statutes, including 16 trade regulation rules promulgated pursuant to the FTC Act and numerous regulations issued pursuant to certain credit, financial, and marketing practice statutes<sup>1</sup> as well

---

<sup>1</sup> For example, the Commission is granted rulemaking authority by the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act) (15 U.S.C. sections 7701-7713) and the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. sections 6101-6108).

as energy laws.<sup>2</sup> The Commission also has adopted a number of voluntary industry guides. Most of the regulations and guides pertain to consumer protection matters, and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions.

For the remainder of the *Background* section, the Commission sets out a brief overview of its ongoing law enforcement efforts, followed by a more detailed list of current regulatory reform-related initiatives and other focus areas.

#### *(A) Law Enforcement Mission*

The Commission is, first and foremost, a civil law enforcement agency. It pursues its mandate to promote competition and protect consumers primarily through case-by-case enforcement of the FTC Act and other statutes. The FTC estimates that, in FY 2018, the agency saved consumers more than \$1.3 billion through its competition enforcement efforts and more than \$1.8 billion through its consumer protection enforcement actions.<sup>3</sup>

*(1) Consumer Protection Enforcement.* The agency continued to pursue its longstanding consumer protection mission by initiating or obtaining settlements in 78 consumer protection cases in district court, reaching 19 administrative consent agreements related to consumer protection, and distributing in excess of \$439 million in redress to more than 2.2 million consumers during the 2018 calendar year.

A major focus of the FTC's law enforcement efforts is fighting fraud. The Commission's anti-fraud program tracks down and stops some of the most egregious scams that prey on U.S. consumers—often, the most vulnerable consumers who can least afford to lose money. Below are a few examples of the

---

<sup>2</sup> For example, the FTC is granted rulemaking authority by the Energy Policy Act of 1992 (106 Stat. 2776, codified in scattered sections of the U.S. Code, particularly 42 U.S.C. sections 6201 et seq.) and the Energy Independence and Security Act of 2007 (EISA) (codified in relevant part at 42 U.S.C. sections 17021, 17301-17305).

<sup>3</sup> FTC Report, Agency Financial Report for FY 2018, at 44 (Nov. 15, 2018), <https://www.ftc.gov/reports/agency-financial-report-fy2018>.

variety of frauds that the Commission has recently pursued, and ways that the Commission leverages its limited resources to do so effectively.

At the FTC's request, in the *Sanctuary Belize* case, a federal district court temporarily shut down the largest overseas real estate investment scam the FTC has ever targeted.<sup>4</sup> According to the FTC, Andris Pukke, a recidivist con artist, created the scam and perpetuated it even while serving a prison sentence for obstruction of justice. Due to the defendants' fraudulent claims, consumers either have lost, or will lose, some or all of their investments. In filing the complaint against Pukke and a range of other defendants, the FTC is seeking to permanently stop the scheme and obtain a court order requiring them to turn over hundreds of millions of dollars to compensate deceived U.S. investors. The FTC also filed three contempt motions against several of the individual defendants for violating a 2006 FTC order against them.

Unlawful robocalls remain a significant consumer protection problem because they repeatedly disturb consumers' privacy and frequently use fraud and deception to pitch goods and services, leading to significant economic harm. In FY 2018, the FTC received approximately 3.8 million robocall complaints.<sup>5</sup> The FTC is using every tool at its disposal to fight these illegal calls.<sup>6</sup> First, the FTC litigates in federal court to protect consumers from abusive and fraudulent calls. The FTC has brought 145 cases alleging Do Not Call or robocall violations and has collected over \$124 million in equitable monetary relief and civil penalties. Most recently, on June 25, 2019, the FTC and its 25 law enforcement partners announced a major crackdown on illegal robocalls, including 94 actions targeting operations around the country that are responsible for more than one billion illegal calls.<sup>7</sup> The second prong of the FTC's robocall program is

---

<sup>4</sup> FTC Press Release, At FTC's Request, Court Halts Massive "Sanctuary Belize" Real Estate Investment Scam (Nov. 8, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/ftcs-request-court-halts-massive-sanctuary-belize-real-estate>.

<sup>5</sup> Total unwanted-call complaints for FY 2018, including both robocall complaints and complaints about live calls from consumers whose phone numbers are registered on the Do Not Call Registry, was just under 5.8 million. See *Do Not Call Registry Data Book 2018: Complaint Figures for FY 2018*, <https://www.ftc.gov/reports/national-do-not-call-registry-data-book-fiscal-year-2018>.

<sup>6</sup> See FTC Robocall Initiatives, <https://www.consumer.ftc.gov/features/feature-0025-robocalls>.

<sup>7</sup> FTC Press Release, FTC, Law Enforcement Partners Announce New Crackdown on Illegal Robocalls (June 25, 2019), <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-law-enforcement-partners-announce-new-crackdown-illegal>.

supporting industry-led technological solutions. From 2012 to 2015, the FTC held four robocall challenges—essentially a contest with a cash prize—to develop call blocking technology. Today, there is hundreds of call blocking solutions on the market, including two that won FTC challenges. In 2017, to provide enhanced support for call blocking initiatives, the Commission started a daily public release of consumer complaint data, which call analytics companies can use as part of their algorithms to score calls.<sup>8</sup>

*(2) Competition Enforcement.* The FTC enforces U.S. antitrust law in many sectors that directly affect consumers and their pocketbooks, such as health care, consumer products and services, technology, manufacturing, and energy. The Commission shares federal antitrust enforcement responsibilities with the Antitrust Division of the U.S. Department of Justice (DOJ). During the 2018 calendar year, the agency filed two competition cases in federal or administrative courts, and in two other matters, the companies abandoned their merger plans after the Commission voted to initiate a legal challenge. The Commission took enforcement action in an additional 19 cases to protect consumers from anticompetitive mergers or business conduct.<sup>9</sup>

One of the FTC's principal responsibilities is to prevent mergers that may substantially lessen competition. Under the Hart-Scott-Rodino Act (HSR), parties to certain large mergers and acquisitions must file premerger notifications with both the FTC and the DOJ to allow for government review. Since fiscal year 2013, premerger filings have increased steadily, and in fiscal year 2018, for the second year in a row, the federal antitrust agencies received just over 2,000 HSR filings.<sup>10</sup> The vast majority of reported transactions do not raise competitive concerns, and the agencies clear those transactions expeditiously. But when the evidence has given the Commission reason to believe that a proposed merger would substantially lessen competition, the Commission has intervened.

---

<sup>8</sup> FTC Press Release, *FTC Escalates the Fight against Illegal Robocalls Using Consumer Complaints to Aid Industry Call-Blocking Solutions* (Aug. 1, 2017), <https://www.ftc.gov/news-events/press-releases/2017/08/ftcescalates-fight-against-illegal-robocalls-using-consumer>.

<sup>9</sup> 2018 Annual Highlights (Mar. 2019), [https://www.ftc.gov/system/files/documents/reports/annual-highlights-2018/2018\\_annual\\_highlights\\_report.pdf](https://www.ftc.gov/system/files/documents/reports/annual-highlights-2018/2018_annual_highlights_report.pdf).

<sup>10</sup> The agencies received 2,100 HSR filings in FY 2018, a slight increase from FY 2017, when the agencies received 2,052 filings. Apart from these two years, the last time HSR filings exceeded 2,000 was in FY 2007.

In *FTC and State of North Dakota v. Sanford Health*, the U.S. Court of Appeals for the Eighth Circuit upheld the district court's preliminary injunction that enjoined the proposed merger of Sanford Health and Mid Dakota Clinic in the Bismarck-Mandan region of North Dakota.<sup>11</sup> The proposed merger, if allowed, likely would have enabled Sanford to demand higher reimbursement rates from commercial health plans for its affiliated doctors practicing in the Bismarck-Mandan area. In July 2019, Sanford Health abandoned its proposed acquisition of Mid Dakota Clinic.

Turning to non-merger competition enforcement, in *FTC v. AbbVie*, the district court ruled on June 29, 2018, that the drug companies AbbVie and Besins used sham litigation to illegally maintain AbbVie's monopoly in the market for transdermal testosterone replacement drugs, which is dominated by AbbVie's drug AndroGel. The court ordered \$448 million in monetary relief to be distributed to consumers who were overcharged for Androgel as a result of AbbVie's conduct. This court order represents the largest monetary award ever in a litigated FTC antitrust case. The case is currently on appeal to the U.S. Court of Appeals for the Third Circuit.<sup>12</sup>

Also, on November 7, 2018, the Commission held that 1-800 Contacts, the nation's largest online retailer of contact lenses, unlawfully orchestrated a web of anticompetitive agreements with rivals that suppressed competition in online search advertising auctions. As a result, the challenged agreements restricted advertising to consumers and resulted in some consumers paying higher retail prices for contact lenses.<sup>13</sup> The Commission also ordered online retailer 1-800 Contacts to end agreements with competitors that limited consumers' ability to search for low-priced contact lenses online. The respondents have appealed the case to the U.S. Court of Appeals for the Second Circuit.

---

<sup>11</sup> *FTC v. Sanford Health et al.*, No. 17-3783 (8th Cir.) (June 13, 2019); prior history available at <https://www.ftc.gov/enforcement/cases-proceedings/171-0019/sanford-health-ftc-state-north-dakota-v>.

<sup>12</sup> FTC Opening Brief (Mar. 28, 2019), *FTC v. AbbVie Inc.*, Nos. 18-2621, 18-2748, 18-2758 (3d Cir. 2019); No. 2:14-cv-5151 (E.D. Pa.), <https://www.ftc.gov/enforcement/cases-proceedings/121-0028/abbvie-inc-et-al>.

<sup>13</sup> Op. of the Comm'n, *In the Matter of 1-800 Contacts, Inc.*, Docket No. 9372 (Nov. 14, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/141-0200/1-800-contacts-inc-matter>.

### *Other Ongoing Focus Areas*

As discussed below, the Commission is also focused on fostering innovation in competition and consumer protection; consumer privacy; small business assistance and advice on data security; and protecting military consumers.

(1) *Fostering Innovation, Competition, and Consumer Protection.* From September 2018 through June 2019, the Commission conducted *Hearings on Competition and Consumer Protection in the 21st Century*, which examined whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection law, enforcement priorities, and policy. The hearings were designed to elicit recommendations that would ensure the competitiveness of U.S. markets without imposing unnecessary costs on private parties or governmental processes. The hearings concluded on June 12, 2019, with a total of 14 sessions and 23 days of public hearings, including testimony by 393 individuals from outside the Commission. The FTC has received more than 900 unique comments on the hearings topics. All hearings were webcast, transcribed, and placed on the public record. Staff are evaluating the record and considering next steps.

(2) *Technology Task Force.* On February 26, 2019, the Commission's Bureau of Competition shifted internal resources to create a task force dedicated to monitoring competition in U.S. technology markets, investigating any potential anticompetitive conduct in those markets, and taking enforcement actions when warranted. This Technology Task Force will help FTC staff deepen the agency's understanding of technology markets and promote vigorous and effective antitrust enforcement in this critical area of the economy. In addition to examining industry practices and conducting law enforcement investigations, the Technology Task Force will, among other things, coordinate and consult with staff throughout the FTC on technology-related matters, including prospective merger reviews in the technology sector and reviews of consummated technology mergers.

(3) *Consumer Privacy.* On September 4, 2019, the Commission announced that Google LLC and its subsidiary YouTube, LLC will pay a record \$170 million to settle allegations by the Commission and

the New York Attorney General that the YouTube video sharing service illegally collected personal information from children without their parents' consent.<sup>14</sup> The settlement requires Google and YouTube to pay \$136 million to the FTC and \$34 million to New York for allegedly violating the Children's Online Privacy Protection Act (COPPA) Rule. The \$136 million penalty is the largest amount the FTC has obtained in a COPPA case since Congress enacted the law in 1998.

In another COPPA case, the operators of the video social networking app Musical.ly, now known as TikTok, agreed to pay \$5.7 million to settle FTC allegations that the company illegally collected personal information from children.<sup>15</sup> The FTC alleged that Musical.ly violated COPPA, which requires that websites and online services directed to children obtain parental consent before collecting personal information from children under the age of 13. In addition to the monetary payment, the settlement also requires the app's operators to comply with COPPA going forward, and to take offline all videos made by children under the age of 13.

On July 24, 2019, the Commission announced that Facebook, Inc. will pay a \$5 billion penalty to settle allegations that the company violated a 2012 FTC order by deceiving users about their ability to control the privacy of their personal information.<sup>16</sup> The FTC's new 20-year settlement order imposes new privacy requirements and requires the company to modify its corporate structure.

The FTC held its fourth annual PrivacyCon, a conference examining cutting-edge research and trends in protecting consumer privacy and security, on June 27, 2019. The event featured presentations on topics such as the European Union General Data Protection Regulation's (GDPR) impact on web

---

<sup>14</sup> Stipulated Order for Permanent Injunction and Civil Penalty Judgment, *United States and New York v. Google and YouTube*, No. 1:19-cv-02642 (D.D.C. Sept. 4, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3083/google-llc-youtube-llc>.

<sup>15</sup> Stipulated Order for Civil Penalties, Permanent Injunction, and other Relief, *United States v. Musical.ly*, No. 2:19-cv-01439 (C.D. Cal. Feb. 27, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3004/musically-inc>.

<sup>16</sup> Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief, *United States v. Facebook*, No. 1:19-cv-02184 (D.D.C. July 24, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/092-3184/facebook-inc>.

privacy, consumers' understanding and attitudes about digital privacy and online tracking, the privacy impacts of paid and free apps, and vulnerabilities affecting Android applications.<sup>17</sup>

(4) *Data Security*. The FTC continues to explore additional ways to provide practical guidance on data security. Since 2002, the FTC has brought about 65 cases against companies that have engaged in unfair or deceptive practices involving inadequate protection of consumers' personal data. The FTC's law enforcement experience informs the agency's educational materials for businesses.

On July 22, 2019, the Commission announced that Equifax Inc. agreed to pay at least \$575 million, and potentially up to \$700 million, as part of a global settlement with the FTC, the Consumer Financial Protection Bureau (CFPB), and 50 U.S. states and territories, which alleged that the company's failure to take reasonable steps to secure its network led to a data breach in 2017 that affected approximately 147 million people.<sup>18</sup> In its complaint, the FTC alleged that Equifax failed to secure the personal information stored on its network, leading to a breach that exposed millions of names and dates of birth, Social Security numbers, physical addresses, and other personal information that could lead to identity theft and fraud.

(5) *Reducing Licensing Restrictions*. The agency has focused its advocacy efforts to reduce regulatory burdens and their associated costs at the state and federal level. For example, the agency released a staff report that discussed ways to reduce unnecessary burdens imposed by occupational licensing requirements.<sup>19</sup> Building on a roundtable that examined ways to mitigate the negative effects of state-based occupational licensing requirements, the report discussed ways to reduce the burden on licensed workers moving to new states or wishing to market services across state lines. The report looked at interstate compacts and model laws that states could use to improve the portability of

---

<sup>17</sup> FTC Workshop, PrivacyCon 2019 (June 27, 2019), <https://www.ftc.gov/news-events/events-calendar/privacycon-2019>.

<sup>18</sup> FTC Press Release, *Equifax to Pay \$575 Million as Part of Settlement with FTC, CFPB, and States Related to 2017 Data Breach* (July 22, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/equifax-pay-575-million-part-settlement-ftc-cfpb-states-related>.

<sup>19</sup> FTC Staff Report, *Options to Enhance Occupational License Portability* (Sept. 2018), [https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license\\_portability\\_policy\\_paper.pdf](https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license_portability_policy_paper.pdf).

occupational licenses and considered procedures that might be adopted to facilitate multistate practice by those who already hold a valid license in one state.

(6) *Small Businesses*. There are more than 30 million small businesses nationwide, employing nearly 59 million people, according to the Small Business Administration (SBA). The Commission maintains a small business website ([www.ftc.gov/SmallBusiness](http://www.ftc.gov/SmallBusiness)) with information to help small business owners avoid scams and protect their systems and customer data from threats.<sup>20</sup> In 2018, the FTC launched a national education campaign to help small businesses strengthen their cyber defenses and protect sensitive data that they store.<sup>21</sup> On May 8, 2019, the Commission hosted a forum on small business financing that examined trends and consumer protection issues in this marketplace, including the recent proliferation of online loans and alternative financing products.<sup>22</sup> The forum gathered a variety of stakeholders to examine this industry, including the different types of products available to small businesses, the benefits of these products, and possible consumer protection concerns.

(7) *Military Consumers*. The agency continued and expanded its focus on military consumers. The FTC led Operation Donate with Honor, a coordinated effort of more than 100 law enforcement actions to target fraudulent and deceptive fundraising purportedly for military and veterans' causes.<sup>23</sup> The Commission joined with 54 Attorneys General from the states, the District of Columbia, American Samoa, Guam, and Puerto Rico, plus 16 additional state agencies that oversee charities. As part of the initiative, the FTC and its partner agencies and organizations distributed a video, two infographics, and five articles to help people donate wisely and avoid scams related to charities that supposedly help veterans.

---

<sup>20</sup> For example, see *Data Breach Response: A Guide for Business* (Apr. 2019), [https://www.ftc.gov/system/files/documents/plain-language/pdf-0154\\_data-breach-response-guide-for-business-042519-508.pdf](https://www.ftc.gov/system/files/documents/plain-language/pdf-0154_data-breach-response-guide-for-business-042519-508.pdf).

<sup>21</sup> See *Engage, Connect, Protect The FTC's Projects and Plans to Foster Small Business Cybersecurity Staff Perspective* (Apr. 2018), [https://www.ftc.gov/system/files/documents/reports/engage-connect-protect-ftcs-projects-plans-foster-small-business-cybersecurity-federal-trade/ecp\\_staffperspective\\_2.pdf](https://www.ftc.gov/system/files/documents/reports/engage-connect-protect-ftcs-projects-plans-foster-small-business-cybersecurity-federal-trade/ecp_staffperspective_2.pdf).

<sup>22</sup> See *Strictly Business: An FTC Forum on Small Business Financing* (May 8, 2019), <https://www.ftc.gov/news-events/events-calendar/strictly-business-ftc-forum-small-business-financing>.

<sup>23</sup> See *FTC and States Combat Fraudulent Charities That Falsely Claim to Help Veterans and Servicemembers* (July 19, 2018), <https://www.ftc.gov/news-events/press-releases/2018/07/ftc-states-combat-fraudulent-charities-falsely-claim-help> and *Operation Donate with Honor Continues* (Mar. 28, 2019), <https://www.consumer.ftc.gov/blog/2019/03/operation-donate-honor-continues>.

In addition, the FTC finalized its rule requiring that the nationwide consumer reporting agencies (CRAs) provide free electronic credit monitoring services for active duty military consumers.<sup>24</sup> At a minimum, such service must notify a consumer of material additions or modifications to the consumer's file to any consumer who provides to the consumer reporting agency (A) appropriate proof that he or she is an active duty military consumer; and (B) contact information.<sup>25</sup> The Economic Growth, Regulatory Relief, and Consumer Protection Act<sup>26</sup> required the FTC to promulgate this Rule and also required the implementing Rule to define: electronic credit monitoring service, material additions or modifications to the file of the consumer, and to determine what constitutes appropriate proof that a consumer is active duty military. The Rule was effective on July 31, 2019, but compliance is not required until October 31, 2019.

(8) *International Consumer Protection and Competition.* Enforcement cooperation is the top priority of the FTC's international consumer protection program. During calendar year 2018, the FTC cooperated in 43 investigations, cases, and enforcement projects with foreign consumer, privacy, and criminal enforcement agencies, as well as global agency enforcement networks.

The FTC's cross-border enforcement cooperation covers the full range of FTC investigations and cases. A recent example is a sweep of elder fraud cases involving assistance from the International Mass-Marketing Fraud Working Group (IMMFWG), which the FTC co-chairs along with the Department of Justice and U.K. law enforcement.<sup>27</sup> These cases involved defendants from around the globe who victimized more than a million Americans, most of whom were seniors. As part of that sweep, the FTC worked directly with U.K. and Canadian authorities to halt *Next-Gen Inc.*, a sweepstakes scam targeting

---

<sup>24</sup> See *FTC Announces Final Rule Implementing Law Providing Free Credit Monitoring for Active Duty Military Consumers* (June 24, 2019), <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-announces-final-rule-implementing-law-providing-free-credit>.

<sup>25</sup> 84 FR 31180 (July 1, 2019).

<sup>26</sup> Pub. Law 115-174

<sup>27</sup> DOJ Press Release, Justice Department Coordinates Nationwide Elder Fraud Sweep of More Than 250 Defendants (Feb. 22, 2018), <https://www.justice.gov/opa/pr/justice-department-coordinates-nationwide-elder-fraud-sweep-more-250-defendants>. The IMMFWG is a network of civil and criminal law enforcement agencies from Australia, Belgium, Canada, Europol, the Netherlands, Nigeria, Norway, Spain, the United Kingdom and the United States.

senior citizens in the United States, Canada, France, Germany, and the U.K.<sup>28</sup> In 2019, the defendants, including Next-Gen, Inc., agreed to forfeit a record \$30 million in cash and assets and were permanently banned from the prize promotion business under a settlement with the Commission.<sup>29</sup> This marks the largest forfeiture ever obtained by the FTC against a sweepstakes scam.

A key focus of the FTC's international privacy efforts is support for global interoperability of data privacy regimes. The FTC works with the U.S. Department of Commerce on three key cross-border data transfer programs for the commercial sector: the EU-U.S. Privacy Shield, the Swiss-U.S. Privacy Shield, and the Asia-Pacific Economic Cooperation (APEC) Cross-Border Privacy Rules (CPBR) System. The FTC enforces companies' privacy promises in these programs, bringing cases as violations of Section 5 of the FTC Act.<sup>30</sup>

The FTC's international competition program supports the Bureau of Competition in the international aspects of their investigations and enforcement, cooperates with competition agencies around the world on enforcement and policy, and promotes convergence of international antitrust policies toward best practice.

The FTC plays a lead role in the International Competition Network (ICN), which includes almost every competition agency in the world and provides a leading forum for international cooperation and convergence. The FTC's activities in the ICN include: serving on the Steering Group; co-chairing the Merger Working Group where it leads projects to develop recommended practices for merger notification and analysis, and practical guidance on investigative techniques; assisting with ICN work on procedural fairness in antitrust investigations; leading the ICN Training on Demand project, which is creating a comprehensive curriculum of video training materials on competition law and practice; and co-chairing the Advocacy and Implementation Network. For the ICN's annual conference in Colombia in May 2019, the

---

<sup>28</sup> FTC Press Release, *FTC Challenges Schemes That Target or Affect Senior Citizens* (Feb. 22, 2018), <https://www.ftc.gov/news-events/press-releases/2018/02/ftc-challenges-schemes-target-or-affect-senior-citizens>.

<sup>29</sup> FTC Press Release, *Operators of Sweepstakes Scam Will Forfeit \$30 Million to Settle FTC Charges* (March 9, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/operators-sweepstakes-scam-will-forfeit-30-million-settle-ftc>.

<sup>30</sup> FTC Press Release, *FTC Takes Action against Companies Falsely Claiming Compliance with the EU-U.S. Privacy Shield, Other International Privacy Agreements* (June 14, 2019), <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-takes-action-against-companies-falsely-claiming-compliance-eu>.

FTC led the project that culminated in the adoption of the Recommended Practices for Investigative Process, under the auspices of the Agency Effectiveness Working Group, which was co-chaired by the U.S. Department of Justice. The Recommended Practices establish detailed, aspirational, procedural fairness norms for competition agency investigative tools, transparency, engagement during investigations, decision-making safeguards, and confidentiality protections. As Recommended Practices, they are the ICN's highest level consensus statement on agency procedures and procedural fairness. The ICN also announced that the United States will host the 2020 ICN annual conference in Los Angeles, California.<sup>31</sup>

The FTC continues to help lead the work of the Organisation for Economic Co-operation and Development (OECD) Competition Committee, including in its current strategic projects on procedural fairness, the digital economy, and the application of competition laws to intellectual property rights. The agency also participates actively in the competition components of the United Nations Conference on Trade and Development (UNCTAD) and APEC.

Within the U.S. government, the FTC works closely with colleagues in other agencies in intergovernmental fora that deal with competition matters, including challenges that arise from the enforcement of foreign competition laws.

### ***Regulatory and Deregulatory Measures***

In 1992, the Commission implemented a program to regularly review its rules and guides. The Commission's review program is patterned after provisions in the Regulatory Flexibility Act, 5 U.S.C. 601-612 and complies with the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission's 10-year program also is consistent with section 5(a) of Executive Order 12866, which directs executive branch agencies to develop a plan to reevaluate periodically all of their significant existing regulations.<sup>32</sup> Under the Commission's program, rules are reviewed on a 10-year schedule that

---

<sup>31</sup> FTC Press Release, International Competition Network Adopts Framework for Competition Agency Procedures and Recommended Practices on Investigative Process and Announces the U.S. Agencies will Host the 2020 ICN Annual Conference (May 17, 2019), <https://www.ftc.gov/news-events/press-releases/2019/05/international-competition-network-adopts-framework-competition>.

<sup>32</sup> 58 FR 51735 (Sept. 30, 1993).

results in more frequent reviews than are 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.”<sup>33</sup> In each rule review, the Commission requests public comments on, among other things, the economic impact and benefits of the 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.

As part of its continuing 10-year review plan, the Commission examines the effect of rules and guides on small businesses and on the marketplace in general. These reviews may lead to the revision or rescission of rules and guides to ensure that the Commission’s consumer protection and competition goals are achieved efficiently and at the least cost to business. Pursuant to this program, the Commission has rescinded 39 rules and guides promulgated under the FTC’s general authority and updated dozens of others since the early 1990s.

The FTC continues to take a fresh look at its longstanding regulatory review process. On May 2, 2019, the Commission issued a revised 10-year review schedule.<sup>34</sup> The Commission is currently reviewing 11 of the 65 rules and guides within its jurisdiction. The FTC maintains a web page at <http://www.ftc.gov/regreview> that serves as a one-stop shop for the public to obtain information and provide comments on individual rules and guides under review as well as the Commission’s regulatory review program generally.

In 2019, the Commission initiated or plans to initiate reviews of four of its rules or guides: (1) Disclosure Requirements and Prohibitions Concerning Franchising, 16 CFR 436; (2) Children’s Online Privacy Protection Rule, 16 CFR 312; (3) Trade Regulation Rule on Funeral Industry Practices, 16 CFR

---

<sup>33</sup> 5 U.S.C. § 610.

<sup>34</sup> 84 FR 18746 (May 2, 2019).

453; and (4) Leather Guides, 16 CFR 24. A description of these new 2019 actions and other new reviews scheduled for 2020 are set out below.

(a) *Rules*

*Children's Online Privacy Protection Rule, 16 CFR 312.* On July 25, 2019, the Commission issued a request for public comment on its Children's Online Privacy Protection Rule (COPPA Rule). The public comment period will close on October 23, 2019. Although the Commission's last COPPA Rule review ended in 2013, the Commission is conducting its ten-year review early in light of changes in the marketplace. In addition to standard questions about the effectiveness of the COPPA Rule, the FTC is seeking comment on all major provisions of the COPPA Rule, including its definitions, notice and parental consent requirements, exceptions to verifiable parental consent, and safe harbor provision. In addition, the Commission plans to hold a public workshop to review the COPPA Rule on October 7, 2019.

*Franchise Rule, 16 CFR 436.* On March 15, 2019, the Commission initiated periodic review of the Franchise Rule (officially titled, Disclosure Requirements and Prohibitions Concerning Franchising).<sup>35</sup> The comment period closed on April 21, 2019, and staff anticipates sending a recommendation to the Commission during late 2019. The Rule gives prospective purchasers of franchises the material information they need in order to weigh the risks and benefits of such an investment. The Rule requires franchisors to provide all potential franchisees with a disclosure document containing 23 specific items of information about the offered franchise, its officers, and other franchisees. Required disclosure topics include, for example: the franchise's litigation history; past and current franchisees and their contact information; any exclusive territory that comes with the franchise; assistance the franchisor provides franchisees; and the cost of purchasing and starting up a franchise.

*Funeral Rule, 16 CFR 453.* The Commission plans to initiate periodic review of the Funeral Industry Practices Rule (Funeral Rule) during late 2019. The Rule, which became effective in 1984, requires sellers of funeral goods and services to give price lists to consumers who visit a funeral home

---

<sup>35</sup> 84 FR 9051 (Mar. 13, 2019).

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.

*Health Breach Notification Rule, 16 CFR 318.* By June 2020, the Commission plans to initiate periodic review of the Health Breach Notification Rule. This Rule requires vendors of personal health records (PHR) and PHR-related entities to provide: (1) notice to consumers whose unsecured personally identifiable health information has been breached; and (2) notice to the Commission. Under the Rule, vendors must notify both the FTC and affected consumers whose information has been affected by a breach “without unreasonable delay and in no case later than 60 calendar days” after discovery of a data breach. Among other information, the notices must provide consumers with steps they can take to protect themselves from harm.

*Identity Theft Rules, 16 CFR 681.* By December 2019, the Commission expects to initiate periodic review of the Identity Theft Rules, which include the Red Flags Rule and the Card Issuer Rule. The Red Flags Rule requires financial institutions and creditors to develop and implement a written identity theft prevention program (a “Red Flags Program”). By identifying red flags for identity theft in advance, businesses can be better equipped to spot suspicious patterns that may arise and take steps to prevent potential problems from escalating into a costly episode of identity theft. The Card Issuer Rule requires credit and debit card issuers to implement reasonable policies and procedures to assess the validity of a change of address if they receive notification of a change of address for a consumer’s debit or credit card account and, within a short period of time afterwards, also receive a request for an additional or replacement card for the same account.

*Negative Option Rule, 16 CFR 425.* On October 2, 2019, the Commission announced the issuance of an Advance Notice of Proposed Rulemaking of the Negative Option Rule (or the Trade Regulation Rule on Use of Prenotification Negative Option Plans) seeking public comments on the

effectiveness and impact of the rule and whether the rule needs to be amended to help consumers avoid recurring payments for products and services they did not intend to order and to allow them to cancel such payments without unwarranted obstacles. 84 FR 52393. The comment period will close December 2, 2019. The Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers ship merchandise, such as books, compact discs, or tapes, automatically to their subscribers and bill them for the merchandise if consumers do not expressly reject the merchandise within a prescribed time. The rule protects consumers by: (a) requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing procedures for the administration of such "negative option" plans.

*(b) Guides*

*Endorsement Guides, 16 CFR 255.* During early 2020, the Commission plans to initiate periodic review of its Guides Concerning the Use of Endorsements and Testimonials in Advertising. Adopted in 1980 and last amended in 2009, the Endorsement Guides are designed to assist businesses and others in conforming their endorsement and testimonial advertising practices to the requirements of the FTC Act. Among other things, the Endorsement Guides say that if there is a connection between an endorser and the marketer that consumers would not expect and it would affect how consumers evaluate the endorsement, that connection should be disclosed. The advertiser must also possess and rely upon adequate substantiation to support claims made through endorsements in the same manner the advertiser would be required to do if it had made the representation directly.

*Leather Guides, 16 CFR 24.* On March 6, 2019, the Commission initiated periodic review of the Leather Guides, formally known as the Guides for Select Leather and Imitation Leather Products.<sup>36</sup> The comment period closed on April 22, 2019, and staff anticipates submitting a recommendation for further action to the Commission by the end of 2019. Adopted in 1996 and last reviewed in 2007, the Leather Guides address misrepresentations regarding the composition and characteristics of specific leather and imitation leather products. The Guides apply to the manufacture, sale, distribution, marketing, or

---

<sup>36</sup> 84 FR 8045 (Mar. 6, 2019).

advertising of leather or simulated leather purses, luggage, wallets, footwear, and other similar products. The Leather Guides state that disclosure of non-leather content should be made for material that has the appearance of leather but is not leather.

*Made in USA or Other US-Origin Claims in Product Advertising and Labeling.* On September 26, 2019, the Commission held a public workshop that considered US-origin claims disseminated in the current marketplace by domestic and foreign sellers, consumer perception of such claims, the need for any changes to the FTC's existing guidance, and other relevant issues. The public comment period relating to the workshop will close on October 11, 2019.

#### *Ongoing Rule and Guide Reviews*

The Commission is also continuing its pre-existing and ongoing review of a number of rules and guides for which review was initiated during 2018 or earlier. These reviews are discussed below.

##### *(a) Rules*

*Care Labeling Rule, 16 CFR 423.* Promulgated in 1971, the Rule on Care Labeling of Textile Apparel and Certain Piece Goods as Amended (the Care Labeling Rule) makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching care labels stating “what regular care is needed for the ordinary use of the product.” The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions and allows the use of approved care symbols in lieu of words to disclose care instructions. After reviewing the comments from a periodic rule review, the Commission concluded on September 20, 2012, that the Rule continued to benefit consumers and would be retained, and sought comments on potential updates to the Rule, including changes that would allow garment manufacturers and marketers to include instructions for professional wetcleaning on labels; permit the use of ASTM Standard D5489–07, “Standard Guide for Care Symbols for Care Instructions on Textile Products,” or ISO 3758:2005(E), “Textiles—Care labeling code using symbols,” in lieu of terms; clarify what can constitute a reasonable basis for care instructions; and update the definition of “dryclean.” On March 28, 2014, the

Commission hosted a public roundtable in Washington, DC, that analyzed proposed changes to the Rule. Staff anticipates Commission action by December 2020.

*Contact Lens Rule, 16 CFR 315.* As part of the systematic rule review process, on September 3, 2015, the Commission issued a Federal Register notice seeking public comments about the Contact Lens Rule.<sup>37</sup> The Contact Lens Rule requires contact lens prescribers to provide prescriptions to their patients upon the completion of a contact lens fitting, and to verify contact lens prescriptions for contact lens sellers authorized by consumers to seek such verification. Sellers may provide contact lenses only in accordance with a valid prescription that is directly presented to the seller or verified with the prescriber.

After issuing a Notice of Proposed Rulemaking in December 2016, holding a public workshop on March 7, 2018, and reviewing associated comments, on May 28, 2019, the Commission issued a Supplemental Notice of Proposed Rulemaking (SNPRM) proposing modifications to its December 2016 proposal to amend the Rule to require that prescribers obtain a signed acknowledgment after releasing a contact lens prescription and maintain each such acknowledgment for a period of not less than three years.<sup>38</sup> The new proposal followed an extensive review and consideration of thousands of public comments and material received by the Commission between 2015 and 2018, including surveys, studies, analyses, and information generated at an FTC workshop devoted to the Rule and the evolving contact lens marketplace. The Commission's SNPRM is further proposing to amend the Rule to: permit prescribers to comply with automatic prescription release via electronic delivery in certain circumstances; specify a time-period for prescribers to respond to requests for prescriptions; clarify and institute additional requirements for automated telephone verification messages; more precisely delineate what constitutes unlawful alteration of a prescription; and require that sellers accept patient prescription presentation. The comment period closed on July 29, 2019, and staff is reviewing the comments received.

---

<sup>37</sup> 80 FR 53272 (Sept. 3, 2015).

<sup>38</sup> 84 FR 24664 (May 28, 2019).

*Energy Labeling Rule, 16 CFR 305.* The Energy Labeling Rule is officially known as the Rule concerning Energy and Water Use Labeling for Consumer Products under the Energy Policy and Conservation Act. On December 10, 2018, the Commission announced it was issuing an NPRM seeking comments on non-substantive amendments to improve the Rule's usability.<sup>39</sup> The proposed amendments would organize the Rule's product descriptions to make it easier for stakeholders to identify relevant covered products, particularly for categories (such as lighting) that contain several different product types and exemptions. Next, the amendments would divide the Rule's primary labeling provision into several sections to make it easier to identify the labeling requirements for specific products. Finally, the proposed changes would remove obsolete, unneeded references to products last produced and sold decades ago. The comment period closed on April 15, 2019, and staff expects Commission action by early 2020.

*Eyeglass Rule, 16 CFR 456.* As part of the systematic rule review process, on September 3, 2015, the Commission issued a Federal Register notice seeking public comments about the Eyeglass Rule (or Trade Regulation Rule on Ophthalmic Practice Rules).<sup>40</sup> The comment period closed on October 26, 2015. Commission staff has completed the review of 831 comments on the Eyeglass Rule and anticipates sending a recommendation for further Commission action by early 2020. The Eyeglass Rule requires that an optometrist or ophthalmologist give the patient, at no extra cost, a copy of the eyeglass prescription immediately after the examination is completed. The Rule also prohibits optometrists and ophthalmologists from conditioning the availability of an eye examination, as defined by the Rule, on a requirement that the patient agree to purchase ophthalmic goods from the optometrist or ophthalmologist.

*Premerger Notification Rules and Report Form (or HSR Rules), 16 CFR 801-803.* The HSR Rules and the Antitrust Improvements Act Notification and Report Form (HSR Form) were adopted pursuant to section 7(A) of the Clayton Act, which requires firms of a certain size contemplating mergers, acquisitions, or other transactions of a specified size to file notification with the FTC and the DOJ and to wait a designated period of time before consummating the transaction. These Rules are continually

---

<sup>39</sup> 84 FR 9261 (Mar. 14, 2019).

<sup>40</sup> 80 FR 53274 (Sept. 3, 2015).

reviewed in order to improve the program's effectiveness and to reduce the paperwork burden on the business community.

During September of 2019, staff submitted a recommendation to the Commission that proposes clarifying the definition of foreign issuer in the HSR Rules.<sup>41</sup> The definition in the HSR Rules for U.S. and Foreign persons and issuers focuses on three tests: (1) location of incorporation, (2) country whose laws organized under, and (3) principal offices. The term "principal offices" is not defined in the rules and is often a source of confusion for parties. This rulemaking would provide a definition. Staff anticipates Commission action by November 2019.

*Privacy Rule, 16 CFR 313.* The Privacy Rule or Privacy of Consumer Financial Information Rule requires, among other things, that certain motor vehicle dealers provide an annual disclosure of their privacy policies to their customers by hand delivery, mail, electronic delivery, or through a website, but only with the consent of the consumer. Congress enacted the Fixing America's Surface Transportation Act (FAST Act) which included a provision amending the Gramm-Leach-Bliley Act to create a new exception to the annual notice requirement. On March 5, 2019, the Commission announced a notice of proposed rulemaking.<sup>42</sup> The public comment period closed on June 3, 2019, and staff anticipates forwarding a recommendation to the Commission action by early 2020.

*Safeguards Rule (or Standards for Safeguarding Customer Information), 16 CFR 314.* The FTC's Safeguards Rule, as directed by the Gramm-Leach-Bliley Act, requires each financial institution subject to the FTC's jurisdiction to assess risks and develop a written information security program that is appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of the customer information at issue. On March 5, 2019, the Commission announced a notice of proposed

---

<sup>41</sup> See *Final Actions* below for information about a separate completed rulemaking proceeding for the HSR Rules.

<sup>42</sup> 84 FR 13158 (April 4, 2019).

rulemaking.<sup>43</sup> The public comment period as extended closed on August 2, 2019,<sup>44</sup> and staff is reviewing approximately 50 comments.

*Telemarketing Sales Rule (TSR), 16 CFR 308.* On August 11, 2014, the Commission initiated a periodic review of the TSR as set out on the 10-year review schedule.<sup>45</sup> The comment period as extended closed on November 13, 2014.<sup>46</sup> Staff anticipates making a recommendation to the Commission by December 2019.

### *Final Actions*

Since the publication of the 2018 Regulatory Plan, the Commission has issued the following final rules or taken other actions to close other rulemaking or guide proceedings.

*CAN-SPAM Rule, 16 CFR 316.* On February 12, 2019, the Commission announced it had concluded a review of the CAN-SPAM Rule and was retaining the Rule in its present form.<sup>47</sup> As part of its ongoing systematic review of its rules and guides, the Commission initiated a periodic review of the CAN-SPAM Rule on June 28, 2017.<sup>48</sup> The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM) regulates the transmission of all commercial electronic mail (email) messages. The FTC issued the CAN-SPAM Rule to implement the Act, as authorized by the statute.

*Holder in Due Course Rule, 16 CFR 433.* On May 2, 2019, after notice and comment, the Commission announced it was retaining the Rule in its present form.<sup>49</sup> On December 1, 2015, the Commission requested comments on the Holder-in-Due Course Rule as part of the Commission's systematic review of all current Commission rules and guides.<sup>50</sup> The Holder in Due Course Rule requires

---

<sup>43</sup> *Id.*

<sup>44</sup> 84 FR 24049 (May 24, 2019).

<sup>45</sup> 79 FR 46732 (Aug. 11, 2014). See *Final Actions* below for information about a separate completed rulemaking proceeding for the Telemarketing Sales Rule.

<sup>46</sup> 79 FR 61267 (Oct. 10, 2014).

<sup>47</sup> 84 FR 13115 (Apr. 4, 2019).

<sup>48</sup> 82 FR 29254 (June 28, 2017).

<sup>49</sup> 84 FR 18711 (May 2, 2019).

<sup>50</sup> 80 FR 75018 (Dec. 1, 2015).

sellers to include language in consumer credit contracts that preserves consumers' claims and defenses against the seller. This Rule eliminated the "holder in due course" doctrine as a legal defense for separating a consumer's obligation to pay from the seller's duty to perform by requiring that consumer credit and loan contracts contain one of two clauses to preserve the buyer's right to assert sales-related claims and defenses against any "holder" of the contracts.

*Military Credit Monitoring Rule, 16 CFR 609.* On June 24, 2019, the Commission announced the promulgation of a Free Credit Monitoring for Active Duty Military Rule that requires the nationwide consumer reporting agencies to provide a free electronic credit monitoring service that, at a minimum, notifies a consumer of material additions or modifications to the consumer's file to any consumer who provides to the consumer reporting agency (A) appropriate proof that he or she is an active duty military consumer; and (B) contact information.<sup>51</sup> The Economic Growth, Regulatory Relief, and Consumer Protection Act<sup>52</sup> required the FTC to promulgate this Rule and also required the implementing Rule to define: electronic credit monitoring service, material additions or modifications to the file of the consumer, and to determine what constitutes appropriate proof that a consumer is active duty military. The Rule was effective on July 31, 2019, but compliance is not required until October 31, 2019.

*Premerger Notification Rules and Report Form (or HSR Rules), 16 CFR 801-803.* On June 27, 2019, the Commission amended the HSR Rules and the HSR Form's filing instructions to incorporate the new 10-digit North American Product Classification System, or NAPCS, codes introduced by the Census Bureau, and the updated 6-digit North American Industry Classification System, or NAICS, codes.<sup>53</sup> As of September 25, 2019, filers submitting data on non-manufacturing revenue are required to use 6-digit NAICS codes. Filers submitting data on manufacturing revenue are now required to use new 10-digit NAPCS codes.

---

<sup>51</sup> 84 FR 31180 (July 1, 2019).

<sup>52</sup> Pub. Law 115-174

<sup>53</sup> 84 FR 30595 (June 27, 2019). See *Ongoing Rule and Guide Reviews (a) Rules* for information about a separate and ongoing rulemaking under the HSR Rules.

*R-value Rule, 16 CFR 460.* On October 28, 2018, the Commission concluded its review of the R-value Rule, officially the Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation, and announced amendments that reduce the regulation's burden, clarify its requirements, and make it easier for the FTC to take action against deceptive R-value claims for non-insulation products.<sup>54</sup> Specifically, the amendments clarify the Rule's coverage, improve Fact Sheet disclosures, and require certain test methods to substantiate R-value claims for non-insulation products, update the test procedures incorporated into the Rule, and exempt certain disclosures for limited format advertising. The amendments will be effective on May 13, 2020. The R-value Rule assists consumers in evaluating and comparing the thermal performance characteristics of competing home insulation products by specifically requiring manufacturers of home insulation products to provide information about the product's degree of resistance to the flow of heat (R-value).

*Nursery Guides, 16 CFR 18.* On June 12, 2019, the Commission rescinded the Guides for the Nursery Industry.<sup>55</sup> Adopted in 1979, the Guides addressed a number of sales practices for outdoor plants, trees, and flowers, and prohibited deception as to such things as size, grade, age, condition, price, origin, or the place where the products were grown. As part of its systematic review of all current FTC rules and guides, the FTC sought comment last year on a proposal to rescind the Nursery Guides.<sup>56</sup> After reviewing the comments, the Commission found that the practices addressed in the Guides are not prevalent in the market, industry members appear to make little use of the Guides, and the Guides do not substantially add to general FTC guidance on deceptive practices.

### *Summary*

The actions under consideration inform and protect consumers, while minimizing the regulatory burdens on legitimate businesses. The Commission continues to identify and weigh the costs and benefits of proposed regulatory actions and possible alternative actions and to seek and consider the broadest practicable array of comment from affected consumers, businesses, and the public at large. In

---

<sup>54</sup> 84 FR 20777 (May 13, 2019).

<sup>55</sup> 84 FR 20776 (May 13, 2019).

<sup>56</sup> 83 FR 45582 (Sept. 10, 2018).

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.”<sup>57</sup>

## **II. Regulatory and Deregulatory Actions**

The Commission has no proposed rule that would be a “significant regulatory action” under the definition in Executive Order 12866.<sup>58</sup> The Commission also has no proposed rule that would have significant international impacts, or any international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, as defined in Executive Order 13609.

### **BILLING CODE**

---

<sup>57</sup> Executive Order 12866, section 1.

<sup>58</sup> Section 3(f) of Executive Order 12866 defines a regulatory action to be “significant” if it is likely to result in a rule that may:

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