

FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory and Deregulatory Priorities

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 practices. The Commission strives to ensure that consumers benefit from a competitive marketplace that provides consumers the best choice of products and services at the lowest prices.

The Commission is the nation's only federal agency with combined authority to protect consumers and promote competition. 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, reduced innovation, and other harms to consumer welfare.

The Commission is authorized to issue and enforce regulations under a number of statutes, including 16 trade regulation rules promulgated pursuant to the Federal Trade Commission Act and numerous regulations issued pursuant to credit, financial, and marketing practice statutes¹ as well as energy laws.² The Commission also has issued a number of industry guides that provide administrative interpretations of the laws administered by the Commission. Most of the Commission's 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.

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 2019, the agency

¹ 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).

² 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).

saved consumers an estimated \$6.2 billion through its competition enforcement efforts and an estimated \$900 million through its consumer protection enforcement actions.³

For FY 2020, in consumer protection cases, the agency filed 64 complaints in federal district court and obtained 81 permanent injunctions and orders requiring defendants to pay more than \$796.9 million in consumer redress or disgorgement of ill-gotten gains. Defendants also were required to pay approximately \$1.0 million under one civil contempt order. In addition, cases referred to the Department of Justice (DOJ) resulted in eight court judgments imposing over \$5 billion in civil penalties. Furthermore, the FTC issued 19 new administrative complaints and entered 24 final administrative orders. During FY 2020, the Commission also issued 23 reports on consumer protection and released 13 new consumer and business education publications.

The FTC also enforces U.S. antitrust laws in many sectors that affect consumers and their wallets, 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 Department of Justice (DOJ).

One of the FTC's principal responsibilities is to prevent mergers that may substantially lessen competition. During FY2020—and despite the challenges created by the COVID-19 pandemic—the agency recorded 27 merger enforcement actions, the most in a year since FY2000.⁴ The FTC sued to block or unwind seven mergers,⁵ and another ten were abandoned in the face of antitrust concerns raised

³ FTC Report, Agency Financial Report for FY 2019, at 47 (Nov. 19, 2019), https://www.ftc.gov/system/files/documents/reports/agency-financial-report-fy2019/ftc_agency_financial_report_fy2019.pdf.

⁴ Since Congress raised the HSR filing thresholds in 2001, FTC merger enforcement actions previously peaked at 25 in FY 2012.

⁵ *In the Matter of Altria Group, Inc. and Juul Labs, Inc.*, FTC Docket No. 9393 (Apr. 1, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/191-0075/altria-groupjuul-labs-matter>; *In the Matter of Thomas Jefferson University and Albert Einstein Healthcare Network*, FTC Docket No. 9392 (Feb 27, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/181-0128/thomas-jefferson-university-matter>; *FTC v. Peabody Energy Corp.*, No. 4-20-cv-00317 (E.D. Mo. Feb. 26, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/1910154/peabody-energy-arch-coal-federal>; *FTC v. Edgewell Personal Care Co.*, No. 1:20-cv-00292 (D.D.C. Feb. 3, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/191-0147/edgewell-personal-care-company-harrys-inc>; *In the Matter of Axon Enterprise Inc., and Safariland, LLC*, FTC Docket No. D9389 (Jan. 3, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/1810162/axonviewu-matter>; *FTC v. Post Holdings Inc.*, No. 1:19-cv-03836 (D.D.C. Dec. 20, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/191->

in our investigations. The Commission accepted negotiated settlements in an additional ten mergers, requiring divestitures to preserve competition in markets as diverse as blockbuster pharmaceuticals,⁶ prosthetic joints,⁷ specialty veterinary services,⁸ and gas stations.⁹ The Commission also assessed a civil penalty for failure to comply with a consent order to divest ten gas stations in a timely manner.¹⁰

Other Ongoing Focus Areas

The Commission is also focused on protecting consumers in the face of the unprecedented coronavirus pandemic; promoting consumer privacy and data security; fostering innovation in competition and consumer protection; ensuring effective competition in technology markets; and protecting military consumers and small businesses.

(1) *Responding to the Coronavirus Pandemic.* The FTC has worked aggressively to combat consumer protection issues arising during the COVID-19 pandemic. In early February 2020, the FTC posted its first warning to consumers about potential COVID-related scams.¹¹ Within weeks, the FTC developed a multimedia campaign, complete with a dedicated website on topics ranging from relief checks and treatment claims to charity fraud, government imposter scams, and misinformation.¹²

0128/post-holdings-inc-matter; *In the Matter of Illumina Inc., and Pacific Biosciences of California Inc.*, FTC Docket No. 9387 (Dec. 17, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/1910035/matter-illumina-inc-pacific-biosciences-california-inc>.

⁶ *In the Matter of AbbVie Inc., and Allergan PLC*, FTC Docket No. C-4713 (May 5, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/191-0169/abbvie-inc-allergan-plc-matter>; *In the Matter of Bristol-Myers Squibb Company and Celgene Corporation*, FTC Docket No. C-4690 (Nov. 15, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/191-0061/bristol-myers-squibb-company-celgene-corporation-matter>. The BMS/Celgene divestiture, valued at \$13.4 billion, is the largest divestiture that the FTC or DOJ has ever required in a merger enforcement matter.

⁷ *In the Matter of Össur Hf., Össur Americas Holdings, Inc., and College Park Industries, Inc.*, FTC Docket No. C-4712 (Apr. 7, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/191-0177/ossur-hf-college-park-industries-matter>.

⁸ *In the Matter of Agnaten SE, Veterinary Specialists of North America, LLC, and NVA Parent Inc.*, FTC Docket No. C-4707 (Feb. 14, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/1910160/agnaten-se-compassion-first-nva-matter>.

⁹ *In the Matter of Tri Star Energy, LLC, Hollingsworth Oil Company Inc., C & H Properties, and Mr. Ronald L. Hollingsworth*, FTC Docket No. C-4720 (June 24, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/201-0074/tri-star-energy-hollingsworth-oil-matter>.

¹⁰ *FTC v. Alimentation Couche-Tard Inc., and CrossAmerica Partners LP*, No. 1:20-cv-01816, (D. D.C. July 6, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/181-0227/alimentation-couche-tard-inc-crossamerica-partners-lp>.

¹¹ FTC Consumer Blog, *Coronavirus: Scammers follow the headlines* (Feb. 10, 2020), <https://www.consumer.ftc.gov/blog/2020/02/coronavirus-scammers-follow-headlines>.

¹² FTC Website, *Coronavirus Pandemic: The FTC in Action*, www.ftc.gov/coronavirus (English) and www.ftc.gov/coronavirus/es (Spanish).

Simultaneously, the Commission leveraged its relationships with national and local organizations, as well as its partnerships with federal agencies, to coordinate messaging and share information about COVID-related scams.

Since the pandemic began in March, the Commission also has issued over 300 warning letters to marketers regarding claims their products will treat, cure, or prevent COVID-19; multi-level marketers regarding health and earnings claims they or their participants are making related to coronavirus; and Voice over Internet Protocol (VoIP) service providers and other companies warning against “assisting and facilitating” illegal coronavirus-related telemarketing calls.¹³ When a warning letter has not remedied the conduct, or is not appropriate given the activity at issue, the FTC has pursued law enforcement actions.¹⁴

(2) *Promoting Consumer Privacy and Data Security.* The FTC has aggressively pursued privacy and data security cases in myriad areas.¹⁵ Notably, in April 2020, the Commission obtained court approval of its settlement with Facebook, Inc. and modified its 2012 administrative order.¹⁶ This settlement resolved a six-count complaint that the company violated the 2012 order by deceiving users about their ability to control the privacy of their personal information, among other things, and also violated the FTC Act.¹⁷ In addition to a \$5 billion penalty for violating the order, the modified order places additional restrictions and obligations on Facebook’s business operations as they relate to privacy.

¹³ See FTC Website, *Coronavirus Warning Letters*, <https://www.ftc.gov/coronavirus/warning-letters>. This webpage is continuously updated.

¹⁴ See *FTC v. QYK Brands LLC*, Case No. 8:20-cv-01431 (C.D. Cal. Aug. 4, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/202-3147/qyk-brands-llc-dba-glowwy>; *FTC v. Golden Sunrise Nutraceutical, Inc.*, Case No. 1:20-at-00540 (E.D. Cal. July 30, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/202-3146/golden-sunrise-nutraceutical-inc>; *In the Matter of Marc Ching*, Docket No. 9394 (F.T.C. Apr. 22, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/202-3110/marc-ching-matter>; *FTC v. Marc Ching*, Case No. 2:20-cv-3775 (C.D. Cal. Apr. 24, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/202-3110/whole-leaf-organics>; *FTC v. Ponte Investments, LLC*, No. 1:20-cv-00177 (D.R.I. Apr. 17, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/202-3115/ponte-investments-llc>. See section below on *Protecting Military Consumers and Small Businesses* for additional information about efforts to fight frauds or scams associated with the COVID-19 pandemic.

¹⁵ See, e.g., FTC Press Release, *FTC Releases 2019 Privacy and Data Security Update* (Feb. 25, 2020), <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-releases-2019-privacy-data-security-update>.

¹⁶ FTC Press Release, *FTC Gives Final Approval to Modify FTC’s 2012 Privacy Order with Facebook with Provisions from 2019 Settlement* (Apr. 28, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-gives-final-approval-modify-ftcs-2012-privacy-order-facebook>.

¹⁷ *United States v. Facebook*, Case No. 1:19-cv-02184 (D.D.C. July 24, 2019), <https://www.ftc.gov/enforcement/casesproceedings/092-3184/facebook-inc>.

The Commission has also sought to improve the effectiveness of its orders. In its recent data security cases,¹⁸ the Commission has required board-level oversight of data security issues where appropriate, set forth more specific requirements (e.g., requirements to encrypt data and segment networks), and improved the accountability of third-party data security assessors.

The Commission also seeks to improve agency decision-making through its policy initiatives. For example, the Commission hosted an online public workshop on September 22, 2020, that examined the potential benefits and challenges to consumers and competition raised by data portability, which is the ability for consumers to move data—such as emails, contacts, calendars, financial information, health information, favorites, friends, or content posted on social media—from one service to another or to themselves.¹⁹ Some of the challenges to implementing data portability include how to treat a consumer's data that might contain information about others, such as friends' photos and comments; how to securely transfer data from one service to another; and whether mandating data portability will give companies less incentive to invest in data-driven products and services.

(3) *Fostering Innovation, Competition, and Consumer Protection*. In June 2019, the Commission concluded its series of public *Hearings on Competition and Consumer Protection in the 21st Century*, through which the agency examined whether broad-based changes in the economy, evolving business practices, and new technologies might require adjustments to competition and consumer protection law, enforcement priorities, and policy.²⁰ One output from the hearings is the recently released Vertical Merger

¹⁸ See, e.g., *In the Matter of Tapplock, Inc.*, Docket No. C-4718 (F.T.C. May 18, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/192-3011/tapplock-inc-matter>; *In the Matter of InfoTrax Systems, L.C.*, Docket No. C-4696 (F.T.C. Dec. 30, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/162-3130/infotrax-systems-lc>; *In the Matter of LightYear Dealer Technologies, LLC*, Docket No. C-4687 (F.T.C. Sept. 3, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3051/lightyear-dealer-technologies-llc-matter-0>; *FTC v. D-Link Systems, Inc.*, Case No. 3:17-CV-39-JD (N.D. Cal. July 2, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/132-3157/d-link>.

¹⁹ FTC Press Release, *FTC Announces that it's September Data Portability Workshop will be Held Online* (Aug. 27, 2020), <https://www.ftc.gov/news-events/press-releases/2020/08/ftc-announces-its-september-data-portability-workshop-will-be>.

²⁰ See Prepared Remarks of Chairman Simons Announcing the Competition and Consumer Protection Hearings (June 20, 2018), https://www.ftc.gov/system/files/documents/public_statements/1385308/prepared_remarks_of_joe_simon_s_announcing_the_hearings_6-20-18_0.pdf. From September 2018 through June 2019, the FTC held 14 sessions over the course of 23 days as a part of its Hearings on Competition and Consumer Protection in the 21st Century. In addition to the 393 individuals from outside the agency who participated in the

Guidelines, which is the first time the FTC and the DOJ have issued joint guidelines explaining how the agencies evaluate the likely competitive impact of vertical mergers.²¹

The FTC and DOJ also issued a joint statement detailing an expedited antitrust procedure and providing guidance for collaborations of businesses working to protect the health and safety of Americans during the COVID-19 pandemic. During FY2020, the FTC also hosted a workshop on non-compete agreements in the workplace and held a joint workshop with the Food and Drug Administration (FDA) on the competitive marketplace for biosimilars.

(4) *Ensuring Effective Competition in Technology Markets.* The Commission continues to focus on developments in the high-technology sector. In 2019, the Bureau of Competition established the Technology Enforcement Division (TED) to monitor competition and investigate potential anticompetitive conduct in technology markets and promote vigorous and effective antitrust enforcement in this critical area of the economy. Working with staff throughout the agency, TED is pursuing a number of very significant investigations involving technology platforms.

In addition, to ensure that the Commission understands the scope of these companies' business strategies, the agency has used its authority under Section 6(b) of the FTC Act to issue special orders to six large technology firms (Alphabet, Amazon, Apple, Facebook, Google, and Microsoft) requiring them to provide information about prior acquisitions not reported to the antitrust agencies under the HSR Act.²² This initiative will allow the Commission to determine whether and to what extent large tech companies are making potentially anticompetitive acquisitions of nascent or potential competitors, outside the purview of advance HSR Act review.

Hearings, 71 members of FTC staff also participated. The hearings garnered a combined online audience of over 21,000 in addition to those who attended in person. The FTC held hearing sessions in Washington, DC; New York City; and Omaha, Nebraska.

²¹ FTC News Release, *FTC and DOJ Issue Antitrust Guidelines for Evaluating Vertical Mergers* (Jun. 30, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/ftc-doj-issue-antitrust-guidelines-evaluating-vertical-mergers>.

²² FTC Press Release, *FTC to Examine Past Acquisitions by Large Technology Companies* (Feb. 11, 2020), <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-examine-past-acquisitions-large-technology-companies>.

(5) *Protecting Military Consumers and Small Businesses.* The Commission maintains its focus on protecting military consumers. Due to the Commission's new Military Credit Monitoring Rule,²³ many members of the military now have access to free electronic credit monitoring. Credit monitoring services can alert consumers to mistakes or problems with their credit reports that might stem from the unauthorized use of their personal information to obtain credit. In July 2020, the Commission launched a new tool that explores data about problems military consumers may experience in the marketplace. For the first time, data about reports the FTC has received from active duty service members and veterans will be available online in an interactive dashboard at www.ftc.gov/exploredata.

The FTC also takes efforts to protect small businesses, which are a critical part of the U.S. economy. The Commission maintains a small business website (www.ftc.gov/SmallBusiness) with information to help small business owners avoid scams and protect their systems and customer data from threats.²⁴ During the COVID-19 pandemic, the FTC has taken enforcement actions against businesses and marketers targeting small businesses. In addition, the FTC and Small Business Administration sent joint warning letters to advertisers for potentially misleading claims about their purported affiliation with the federal government or emergency loan programs created to protect businesses during the pandemic.²⁵

Regulatory and Deregulatory Measures

In 1992, the Commission implemented a program to review its rules and guides on a regular basis. 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 review program is also consistent with section 5(a) of Executive Order 12866, which

²³ 16 CFR 609. In response to the new rule, which implements section 302 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, the nationwide credit reporting agencies—Equifax, Experian, and TransUnion—are providing free electronic credit monitoring services to active duty service members and National Guard members.

²⁴ See, e.g., *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.

²⁵ See FTC Business Blog, *Protecting small businesses seeking financing during the pandemic* (Aug. 3, 2020), <https://www.ftc.gov/news-events/blogs/business-blog/2020/08/protecting-small-businesses-seeking-financing-during>.

directs executive branch agencies to reevaluate periodically all of their significant regulations.²⁶ Under the Commission's program, rules and guides are reviewed on a 10-year schedule that results in more frequent reviews than are generally required by the Regulatory Flexibility Act. The public can obtain information on rules and guides under review and the Commission's regulatory review program generally at <https://www.ftc.gov/enforcement/rules/retrospective-review-ftc-rules-guides>.

The program provides an ongoing systematic approach for obtaining information about the costs and benefits of 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."²⁷ As part of each review, the Commission requests public comment 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. 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 40 rules and guides promulgated under the FTC's general authority and updated dozens of other rules and guides since the program's inception.

On April 15, 2020, the Commission issued an updated ten-year review schedule.²⁸ During calendar year 2020, the Commission has initiated or plans to initiate reviews of eleven of its rules. A description of these new 2020 actions and other planned reviews are set out below.

(a) Newly Initiated and Upcoming Periodic Reviews of Rules and Guides

Since the publication of the 2019 Regulatory Plan, the Commission has initiated or plans to initiate periodic reviews of the following rules and guides:

Endorsement Guides, 16 CFR 255. On February 21, 2020, the Commission initiated a periodic review of the Endorsement Guides.²⁹ The comment period, as extended, closed on June 22, 2020.³⁰ FTC staff is currently reviewing the comments received. The Guides are designed to assist businesses and

²⁶ 58 FR 51735 (Sept. 30, 1993).

²⁷ 5 U.S.C. 610.

²⁸ 85 FR 20889 (Apr. 15, 2020).

²⁹ 85 FR 10104 (Feb. 21, 2020).

³⁰ 85 FR 19709 (Apr. 8, 2020).

others in conforming their endorsement and testimonial advertising practices to the requirements of the FTC Act. Among other things, the Endorsement Guides provide 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.

The Prohibition of Energy Market Manipulation Rule, 16 CFR 317. On June 5, 2020, the Commission initiated a regulatory review of its Prohibition of Energy Market Manipulation Rule. The public comment period closed on September 3, 2020.³¹ The FTC sought comment on the continuing need for the Rule, its costs and benefits, and the need for any modifications to the Rule.

Health Breach Notification Rule, 16 CFR 318. On May 22, 2020, the Commission initiated a periodic review of the Health Breach Notification Rule.³² The comment period closed on August 20, 2020. Commission staff is reviewing comments. The 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.

Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 CFR 432. The Power Output Claims for Amplifiers Utilized in Home Entertainment Products Rule (Amplifier Rule) establishes uniform test standards and disclosures so that consumers can make more meaningful comparisons of amplifier equipment performance attributes. The Commission plans to initiate periodic review of the Amplifier Rule by December 2020. The Commission plans to seek comments on, among other things, the economic impact and benefits of this Rule; possible conflict between the Rule and State, local, or other Federal laws or regulations; and the effect on the Rule of any technological, economic, or

³¹ 85 FR 34548 (June 5, 2020).

³² 85 FR 31085 (May 22, 2020).

other industry changes.

Funeral Rule, 16 CFR 453. On February 14, 2020, the Commission initiated a periodic review of the Funeral Industry Practices Rule (Funeral Rule).³³ The comment period as extended closed on June 15, 2020.³⁴ Commission staff is reviewing the comments received. 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.

Fair Credit Reporting Act Rules, 16 CFR 640-642, 660, and 680. During fall 2020, the Commission issued notices of proposed rulemaking and initiated periodic reviews for several Fair Credit Reporting Act rules as part of the Commission's systematic review of Commission rules and guides. These rules include: Duties of Creditors Regarding Risk-Based Pricing, 16 CFR 640;³⁵ Duties of Users of Consumer Reports Regarding Address Discrepancies, 16 CFR 641;³⁶ Prescreen Opt-Out Notice, 16 CFR 642;³⁷ Duties of Furnishers of Information to Consumer Reporting Agencies, 16 CFR 660;³⁸ and Affiliate Marketing, 16 CFR 680.³⁹ The Commission seeks comments on, among other things, the economic impact and benefits of these rules; possible conflict between the rules and State, local, or other Federal laws or regulations; and the effect on the rules of any technological, economic, or other industry changes. The reviews also propose revisions to the Rules to correspond to changes to the Fair Credit Reporting Act made by the Dodd-Frank Act.

Hart-Scott-Rodino Antitrust Improvements Act Coverage, Exemption, and Transmittal Rules, 16 CFR 801-803. On December 1, 2020, the Commission initiated the periodic review of the Hart-Scott-Rodino Antitrust Improvements Act Coverage, Exemption, and Transmittal Rules (HSR Rules) as part of the Commission's systematic review of all current Commission rules and guides.⁴⁰ The comment period will close on February 1, 2021. The Commission seeks comment on whether the Rules are still serving their intended purpose or if they need to be amended, eliminated, or supplemented through questions on

³³ 85 FR 8490 (Feb. 14, 2020).

³⁴ 85 FR 20453 (Apr. 13, 2020).

³⁵ NPRM (16 CFR 640), 85 FR 63462 (Oct. 8, 2020).

³⁶ NPRM (16 CFR 641), 85 FR 57172 (Sept. 15, 2020).

³⁷ NPRM (16 CFR 642), 85 FR 59226 (Sept. 21, 2020).

³⁸ NPRM (16 CFR 660), 85 FR 61659 (Sept. 30, 2020).

³⁹ NPRM (16 CFR 680), 85 FR 59466 (Sept. 22, 2020).

⁴⁰ 85 FR 77042 (Dec. 1, 2020).

seven topics. Answers to questions on these topics will provide information that may facilitate drafting of new or revised rules. 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.

(b) Ongoing Periodic Reviews of Rules and Guides

The following proceedings for the retrospective review of Commission rules and guides described in the 2019 Regulatory Plan are ongoing:

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.⁴¹ The comment period closed on April 22, 2019, and staff anticipates submitting a recommendation for further action to the Commission by the end of 2020. The Leather Guides apply to the manufacture, sale, distribution, marketing, or advertising of leather or simulated leather purses, luggage, wallets, footwear, and other similar products. The Guides address misrepresentations regarding the composition and characteristics of specific leather and imitation leather products.

Telemarketing Sales Rule (TSR), 16 CFR 310. On August 11, 2014, the Commission initiated a periodic review of the TSR as set out on the 10-year review schedule.⁴² The comment period as extended closed on November 13, 2014.⁴³ Staff anticipates making a recommendation to the Commission by December 2020.

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).⁴⁴ Although the Commission's last COPPA Rule review ended in 2013, the Commission initiated this review early in light of changes in the marketplace. Following an extension, the public comment period closed on December 9, 2019.⁴⁵ The FTC sought comment on all major provisions of the COPPA Rule, including its

⁴¹ 84 FR 8045 (Mar. 6, 2019).

⁴² 79 FR 46732 (Aug. 11, 2014).

⁴³ 79 FR 61267 (Oct. 10, 2014).

⁴⁴ 84 FR 35842 (July 25, 2019).

⁴⁵ 84 FR 56391 (Oct. 22, 2019).

definitions, notice and parental consent requirements, exceptions to verifiable parental consent, and safe harbor provision. The FTC hosted a public workshop to address issues raised during the review of the COPPA Rule on October 7, 2019. Staff is analyzing and reviewing public comments.

Negative Option Rule, 16 CFR 425. On October 2, 2019, the Commission issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking public comment on the effectiveness and impact of the Trade Regulation Rule on Use of Prenotification Negative Option Plans (Negative Option Rule).⁴⁶ The Negative Option Rule helps 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. Staff anticipates Commission action by December 2020.

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).⁴⁷ The comment period closed on April 21, 2019. On September 4, 2020, the Commission announced it will hold a public workshop on November 10, 2020.⁴⁸ Any written comments related to the issues discussed at the workshop must be received by December 17, 2020. 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.

Identity Theft Rules, 16 CFR 681. In December 2018, the Commission initiated a periodic review of the Identity Theft Rules, which include the Red Flags Rule and the Card Issuer Rule.⁴⁹ 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

⁴⁶ 84 FR 52393 (Oct. 2, 2019).

⁴⁷ 84 FR 9051 (Mar. 13, 2019).

⁴⁸ 85 FR 55850 (Sept. 10, 2020).

⁴⁹ 83 FR 63604 (Dec. 11, 2018).

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. FTC staff is reviewing the comments received and anticipates sending a recommendation to the Commission by December 2020.

(c) Proposed Rules

Since the publication of the 2019 Regulatory Plan, the Commission has initiated or plans to take further steps as described below in the following rulemaking proceedings:

Made in USA Labeling Rule, 16 CFR 323. On September 26, 2019, the Commission held a public workshop that considered U.S.-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. On July 16, 2020, the Commission published a Notice of Proposed Rulemaking inviting comment on a proposed rule to address "Made in USA" and other unqualified U.S.-origin claims on product labels.⁵⁰ The public comment period closed on September 14, 2020, and staff is reviewing the public comments. The proposed Rule would prohibit marketers from making unqualified MUSA claims on labels unless final assembly or processing of the product occurs in the United States; all significant processing that goes into the product occurs in the United States; and all or virtually all ingredients or components of the product are made and sourced in the United States.

Energy Labeling Rule, 16 CFR 305. The Energy Labeling Rule requires energy labeling for major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models. On April 10, 2020, the Commission proposed amendments to the Rule to require EnergyGuide labels for portable air conditioners.⁵¹ The Commission also sought comment on changes to energy efficiency descriptors for central air conditioners to conform to pending Department of Energy changes. The comment period closed on June 9, 2020. Staff is reviewing comments and anticipates forwarding a recommendation to the Commission by November 2020.

⁵⁰ 85 FR 43162 (July 16, 2020).

⁵¹ 85 FR 20218 (Apr. 10, 2020).

Privacy of Consumer Financial Information Rule, 16 CFR 313. The Privacy of Consumer Financial Information Rule (Privacy 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 April 4, 2019, the Commission issued a Notice of Proposed Rulemaking to revise the Rule's scope, to modify the Rule's definitions of "financial institution" and "federal functional regulator," and to update the Rule's annual customer privacy notice requirement.⁵² The NPRM also proposed to remove certain examples in the Rule that apply to financial institutions that now fall outside the scope of the Commission's Rule. These changes were intended to conform the Rule to the current requirements of the Gramm-Leach-Bliley Act, as amended by the Dodd-Frank Act and the FAST Act. The public comment period closed on June 3, 2019, and staff anticipates forwarding a recommendation to the Commission by December 2020.

Safeguards Rule (Standards for Safeguarding Customer Information), 16 CFR 314. The FTC's Safeguards Rule, which was issued under 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 Rulemaking (NPRM).⁵³ The comment period, as extended, closed on August 2, 2019.⁵⁴ On July 13, 2020, the Commission held a public workshop to obtain additional information relating to the costs and benefits of the changes proposed in the NPRM.⁵⁵ Staff is reviewing the record created in response to the NPRM and workshop.

Care Labeling Rule, 16 CFR 423. Promulgated in 1971, the Rule on Care Labeling of Textile Apparel and Certain Piece Goods as Amended (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

⁵² 84 FR 13150 (Apr. 4, 2019).

⁵³ 84 FR 13158 (Apr. 4, 2019).

⁵⁴ 84 FR 24049 (May 24, 2019).

⁵⁵ 85 FR 23354 (Apr. 27, 2020).

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. On July 23, 2020, the Commission issued a Supplemental Notice of Proposed Rulemaking seeking comment on a proposed repeal of the Rule.⁵⁶

Eyeglass Rule, 16 CFR 456. As part of the systematic review process, the Commission issued a Federal Register notice seeking public comments about the Trade Regulation Rule on Ophthalmic Practice Rules (Eyeglass Rule) on September 3, 2015.⁵⁷ 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 January 2021. 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 Coverage, Exemption, and Transmission Rules, 16 CFR 801, 802, and 803. On October 31, 2019, the Commission proposed amendments to its Premerger Notification Rules to clarify how to determine if an entity is a United States or foreign person or issuer for purposes of determining reportability under the Hart-Scott-Rodino Act.⁵⁸ The comment period closed on December 30, 2019, and staff anticipates sending a recommendation to the Commission by Fall 2020. On December 1, 2020, the Commission issued an NPRM (on De Minimis and Aggregation) that proposes to require filers to disclose additional information about their associates and to aggregate acquisitions in the same issuer across those entities.⁵⁹ The NPRM also proposes to exempt the acquisition of 10 percent or less of an issuer's voting securities unless the acquiring person already has a competitively significant relationship with the issuer. The comment period will close on February 1, 2021. Staff also anticipates that the Commission will issue one additional NPRM (on Reporting and Waiting Period Requirements) during Fall

⁵⁶ 85 FR 44485 (July 23, 2020).

⁵⁷ 80 FR 53274 (Sept. 3, 2015).

⁵⁸ 84 FR 58348 (Oct. 31, 2019).

⁵⁹ 85 FR 77053 (Dec. 1, 2020).

2020 to seek comment on proposed changes to the Rules to modify definitions, extend by 30 days the one year period for parties to complete their acquisition in certain circumstances, and make other explanatory and ministerial changes to the Rules as well as the HSR Form and Instructions to effect the proposed changes.

(d) Final Actions

Since the publication of the 2019 Regulatory Plan, the Commission has issued the following final agency actions in rulemaking proceedings:

Textile Rules, 16 CFR 303. On October 6, 2020, the Commission published a final rule amending the Rules and Regulations under the Textile Fiber Products Identification Act (Textile Rules) to incorporate the most recent ISO 2076 standard for generic fiber names.⁶⁰ The amendment became effective on November 5, 2020. The Commission anticipates that the amendment will reduce compliance costs and increase flexibility for firms providing textile fiber information to consumers.

Energy Labeling Rule, 16 CFR 305. On October 30, 2019, the Commission issued final amendments to the Energy Labeling Rule to reorganize several sections, amend the Rule to increase clarity, eliminate several obsolete provisions, and make other minor technical corrections.⁶¹

Contact Lens Rule, 16 CFR 315. On August 17, 2020, the Commission published a final rule amending the Contact Lens Rule, which facilitates shopping for contact lenses by requiring prescribers to automatically provide a copy of a patient's prescription to the patient and to verify or provide prescriptions to third-party sellers.⁶² The final rule requires prescribers to request that their patients confirm that they have received their prescription, and allows flexibility in the way the prescription and confirmation are provided. The final rule includes several new requirements for sellers to address concerns about sellers verifying prescriptions by leaving incomplete or incomprehensible automated telephone messages with prescribers. The final rule also includes modifications designed to reduce illegal prescription alterations by sellers. The final rule was effective on October 16, 2020. Issuance of the final rule follows an extensive review and consideration of thousands of public comments and materials received by the Commission

⁶⁰ 85 FR 63012 (Oct. 6, 2020).

⁶¹ 84 FR 58026 (Oct. 30, 2019).

⁶² 85 FR 50668 (Aug. 17, 2020).

between 2015 and 2019, including surveys, studies, analyses, and information generated at an FTC workshop devoted to the Rule and the evolving contact lens marketplace. It also incorporates changes made in response to public comments received following a Supplemental Notice of Proposed Rulemaking published in May 2019.⁶³

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. 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."⁶⁴

Significant Regulatory Actions

The Commission has no proposed rule that would be a "significant regulatory action" under the definition in Executive Order 12866.⁶⁵ 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.

⁶³ 84 FR 24664 (May 28, 2019).

⁶⁴ Executive Order 12866, section 1.

⁶⁵ 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.