



**REPORT TO CONGRESS**

**SMALL BUSINESS REGULATORY  
ENFORCEMENT FAIRNESS ACT**

**FEDERAL TRADE COMMISSION  
MARCH 1998**



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## EXECUTIVE SUMMARY

Pursuant to SBREFA, the FTC hereby reports to Congress on its achievements between March 28 and December 31, 1997, with respect to: (1) providing compliance and other kinds of assistance to small businesses; and (2) affording leniency in the determination of civil penalties for small businesses found to be in violation of FTC rules. Some of these achievements are highlighted below.

- g More than 260,000 copies of business publications distributed -- many of them to small businesses.
- g Most business education publications available on the FTC's website, <http://www.ftc.gov>, which had nearly 16 million "hits" during this period.
- g New publications to help small businesses comply with amendments to the Fair Credit Reporting Act, the Consumer Leasing Act, textile labeling requirements, and fair packaging requirements for milk.
- g Guidelines addressing antitrust laws relevant to physicians and health-care providers.
- g New publications to assist small businesses in avoiding fraud perpetrated by bogus "yellow pages" publications, bogus fund-raising appeals, and invention-promotion schemes.
- g 100 speeches by Commissioners or Commission staff members to business groups and organizations representing small business interests.
- g Bureau of Consumer Protection staff responded to more than 16,000 individual requests for compliance (and other) assistance from small businesses. The Bureau of Competition responded to nearly 800 such requests.
- g Eleven small businesses participated in the Commission's civil penalty leniency program, with the amount of penalties reduced and waived totaling more than \$1 million.
- g Workshops, conferences, and hearings on many topics of importance to small businesses, including: proposed amendments to the FTC's Franchise Rule and 900-Number Rule, food advertising claims, privacy issues in the on-line marketplace, and antitrust policies regarding joint ventures.
- g Continuing commitment to regulatory reform: The Commission has repealed nearly 50% of its trade regulation rules and about 40% of its industry guides in recent years; other rules, including the textile labeling rules, have been streamlined and simplified.

## INTRODUCTION

The Federal Trade Commission has prepared this report to comply with the Small Business Regulatory Enforcement Fairness Act (“SBREFA”).<sup>1</sup> The Federal Trade Commission is a small agency<sup>2</sup> with a big mission: to maintain a free and fair marketplace for both business and consumers. The Commission enforces the FTC Act, 15 U.S.C. § 41 *et seq.*, and has enforcement responsibilities under 37 additional statutes. The Commission enforces 19 rules promulgated pursuant to specific statutory directive and 13 trade regulation rules promulgated under the rulemaking authority of the FTC Act. The Commission has always been aware of and attentive to the special needs and interests of small businesses subject to its jurisdiction.

Pursuant to SBREFA, the Commission developed policy statements describing how it considers small business interests in two areas: (1) providing compliance assistance, and (2) determining appropriate civil penalty amounts when bringing enforcement actions.<sup>3</sup> The Commission’s Small Business Compliance Assistance Policy Statement describes various forms of assistance available to small businesses to help them understand and comply with obligations imposed by the statutes and rules enforced by the Commission. The Commission’s Civil Penalty Leniency Program Statement discusses mitigating factors the Commission considers when small businesses are subject to civil penalties for violation of a rule or statute enforced by the Commission. Both policy statements were issued by the Commission on March 28, 1997, implementing sections 213 and 223 of SBREFA, 5 U.S.C. § 601 note, and were published in the *Federal Register* on April 8, 1997.<sup>4</sup> The policy statements also are available through the Internet, on the Commission’s website at <http://www.ftc.gov>.

In further compliance with SBREFA, this report discusses the scope of the Commission’s programs, the number of small businesses using the programs, and the programs’ achievements. The report covers a nine-month period from March 28, 1997, when the policies were formally adopted, through December 31, 1997. The cut-off date was chosen to allow for collection and analysis of the responsive information and preparation of the report.



## SMALL BUSINESS COMPLIANCE ASSISTANCE

Section 213 of SBREFA required agencies regulating the activities of small businesses to establish, by March 29, 1997, a program to answer inquiries and provide information and advice on compliance with the law and to report to Congress, one year later, on the scope and achievements of the program, as well as the number of small businesses using the program.<sup>5</sup> The Commission has had such programs in place for most of its history, and in recent years has taken a number of steps to enhance these efforts. As described below, the agency offers an array of services, involving both general guidance and individualized advice, to help small businesses understand their obligations under the laws and regulations administered by the Commission. As a result of SBREFA, the Commission approved a policy statement describing the various forms of assistance available, and monitored use of these resources during the described reporting period.

Reporting on the number of small businesses that used the FTC's compliance assistance program necessitates making some informed assumptions. Nevertheless, the Commission believes it can provide a reasonable estimate of the number of small business participants in its program. (How the Commission derived these estimates is explained in detail on pages 6-11.) The Commission estimates that more than 16,800 small businesses requested and received individual compliance advice from Commission staff. A much larger number of small businesses received more general compliance advice. These include nearly four million recipients of the Commission's consumer education materials, many of which are also relevant to small businesses, and approximately 260,000 recipients of its business education publications. The Commission believes it would be reasonable to assume that small businesses requested and received a significant percentage of these materials. In addition, as described below, Commission staff members made about 100 presentations to groups and organizations representing small-business interests. The audiences and participants at such events varied widely, but the Commission believes that many small businesses received compliance assistance from the FTC at these events.

In the sections below we will first describe the general guidance that the Commission offers, and then the specific guidance offered to individual firms.

### GENERAL GUIDANCE

The Commission offers general information in a variety of forms to address issues and questions that small businesses frequently raise. Published information often satisfies the needs of these businesses for guidance as to their own obligations. In particular, the Commission distributes a guide to its enforcement generally, business education materials, and consumer education materials.



## ***A GUIDE TO THE FEDERAL TRADE COMMISSION***

This brochure describes the principal antitrust statutes and consumer protection laws enforced by the agency. Approximately 1,360 copies of this booklet, explaining how the FTC enforces the law to protect the workings of a free market, were distributed.

## **BUSINESS EDUCATION MATERIALS**

Various Commission publications or statements of policy explain how particular kinds of businesses, including many small ones, can conduct their affairs in compliance with the laws and regulations administered by the FTC. More than 50 such publications are currently available.

- g 26 ***business compliance guides and publications*** explain the requirements of specific Commission rules in a plain-English, non-technical manner.<sup>6</sup> Six business compliance publications were created or revised during the reporting period to help businesses comply with the law. Many small businesses are included in the target audiences for these six publications.<sup>7</sup>

***Fair Credit Reporting Act, As Amended; Credit Reports: What Information Providers Need To Know; and Using Credit Reports: What Employers Need To Know*** help businesses comply with amendments to the Fair Credit Reporting Act, which became effective September 30, 1997, and are enforced by the FTC. The Fair Credit Reporting Act protects the privacy of credit report information and helps guarantee that information supplied by consumer reporting agencies is as accurate as possible. As a result of the amendments, an employer must get a job applicant's written permission before obtaining a copy of the applicant's credit report. Also, for the first time, creditors and others that furnish information to credit reporting agencies (the companies that compile and disseminate credit information) have new duties under federal law to ensure the accuracy of the information they supply. Credit bureaus have increased responsibilities, especially in the way they handle disputed information in consumer files.

***Calling It Cotton: Labeling & Advertising Cotton Products*** informs businesses what information under the Textile Rules must be included on labels and in written advertisements if they want to promote the presence of premium forms of cotton (such as "pima" cotton) in textile products. The fiber content labeling of clothing and other household textile products is governed generally by FTC rules pursuant to the Textile Fiber Products Identification Act. Another new business publication, explaining those rules and recent revisions to the rules, will be published in the coming year.

*Advertising Consumer Leases* answers frequently asked questions about the advertising requirements of the Consumer Leasing Act and Regulation M, the 1997 revised disclosure requirements, and the liability for violations.

*Measuring Up! Good Packaging Practices For Dairy Products*. The Commission prepared this brochure to educate businesses about the problem and provide information to help the industry examine and reform its practices. A recent study by federal and state agencies, including the FTC, revealed that many containers of milk sold at wholesale and retail and many cartons of milk served in schools, universities, and hospitals contain less than the amount stated on the label. Shortages also occurred in containers of other dairy products and juice.

- g Industry guides address common compliance issues under the FTC Act, as applied to particular industries or particular practices.<sup>8</sup> During the reporting period, the Commission's Jewelry Guides (16 CFR Part 23) were revised to offer advice on the marketing of jewelry made in whole or in part of platinum, including the incorporation of International Organization for Standardization marking standards, thus facilitating international trade.
  
- g Antitrust guidelines and policy statements explain the application of antitrust laws to particular practices or industries.<sup>9</sup> Specific examples and illustrative fact patterns show how the agency would apply the law to a particular set of facts.<sup>10</sup> For example, last year the Commission and the Department of Justice revised their joint 1992 *Horizontal Merger Guidelines* in order to clarify how the agencies analyze efficiency claims in mergers under review by the federal government. The revised guidelines provide a roadmap as to how they assess whether efficiencies will lead merging firms to lower prices, create new products, or otherwise enhance competition. They also make clear what merging firms must do to demonstrate claimed efficiencies. The revised guidelines bring the analysis of efficiencies in mergers up to date with comparable analyses in other areas of antitrust law, and up to date with our contemporary competitive environment.

Guidelines on other antitrust issues, published in previous years, remain in effect. Some of these are of particular relevance to small business, such as the guidelines issued jointly by the FTC and the Department of Justice on various aspects of the health care industry. For example, the Health Care Office in the Commission's Bureau of Competition makes available to doctors, both in print and on the Commission's Internet site, a set of guidelines to a number of physician issues, including guidelines and "safe harbors" relevant to physician joint ventures.

## CONSUMER EDUCATION MATERIALS

More than 200 print and broadcast items directed to consumers also benefit small businesses by identifying practices that may generate consumer protection problems between businesses and their customers and describing the applicable laws and regulations.<sup>11</sup> Also, small businesses are frequently consumers themselves. Materials on such topics as office supply scams and disclosures to prospective franchisees can help small firms avoid problems. During the reporting period, the Commission created four new publications designed specifically to assist small businesses and entrepreneurs or help them avoid being defrauded.

***When Yellow Pages Invoices Are Bogus***, produced jointly by the FTC and the Yellow Pages Publishers Association, alerts businesses that unscrupulous promoters are soliciting advertising in “alternative” or nonexistent business directories. Although these directories appear to be legitimate Yellow Pages publications, many are not distributed to the public and offer no benefits to businesses that pay to advertise in them. In the worst cases, these “directories” are not published at all.

***Raising Funds? What To Know About Hiring A Professional*** provides nonprofit organizations with helpful information for investigating and hiring professional fund-raisers.

***Donating To Public Safety Fund-Raiser*** was prepared for businesspeople who may wish to contribute to law enforcement or public safety groups in their communities or purchase advertising in publications that purport to be sponsored by nonprofit organizations, such as police or firefighter associations. This FTC publication helps businesspeople apply the same business savvy they use to make business decisions to respond to fund-raising appeals.

***Invention Promotion Firms***, produced by the FTC in cooperation with the U.S. Patent and Trademark Office, features information for inventors about how to detect and avoid invention promotion scams.

## **DISTRIBUTION OF BUSINESS AND CONSUMER EDUCATION INFORMATION**

All of these materials are readily available to small businesses and others directly from the Commission, on the Commission’s website, or from various other public or private sources.<sup>12</sup> During the reporting period, the Commission distributed its business and consumer materials in response to individual requests. In addition, it identified appropriate audiences and disseminated materials in large quantities. The Commission also distributed its educational materials through numerous other organizations, including federal distribution centers, state agencies, the military, schools and libraries, churches, financial institutions, the media, consumer and non-profit organizations, and trade associations. The FTC continued to work with the Small Business Administration to

distribute its educational materials through SBA regional centers. It is impossible to determine the actual number of publications provided to small businesses; however, it is fair to assume that small businesses constituted a significant segment of the audience for FTC publications.

#### **Print Distribution**

The Commission distributed a total of 145,929 business compliance publications, 115,364 other business education publications, and 3,859,792 copies of print materials directed to consumers. Of this total, the Commission's ten regional offices distributed 18,312 business publications, and 55,347 consumer publications.

#### **Public Service Announcement Distribution**

The FTC produced and distributed a radio public service message concerning Franchise Opportunities. The Commission estimates that from October to December 1997, there were 13,364 broadcasts of this message to an estimated audience of 18,030,040.

#### **Industry Distribution**

The Commission cooperated with business groups and others in the development and distribution of publications. For example, the Commission recently coordinated with industry groups to distribute, primarily to funeral casket retailers (most of which are small businesses), 28,000 copies of the business booklet *Complying With The Funeral Rule*. Such joint efforts multiply the outreach of the agency's consumer and business education program.

#### **FTC Internet Distribution**

The FTC made extensive use of the Internet to distribute materials. The FTC website, <http://www.ftc.gov>, includes both the Commission's consumer and business education publications. The **BusinessLine** section of the Commission's website, which provides access to the Commission's business education publications, had 29,023 "hits" during the reporting period. The **ConsumerLine** section of the FTC's website, which provides access to the Commission's consumer education publications, had 522,619 "hits" during that period. An additional 500,000 publications were retrieved through these two sections of the website. The entire FTC website, which includes guidelines, policy statements, staff advisory opinions, press releases, copies of recent orders, texts of major speeches and other materials, had a total of 15,960,143 "hits" during the reporting period. The FTC website is accessible as a "link" from online services at the Small Business Administration and the U.S. Department of Commerce. Also during the reporting period, the Commission began to distribute its business publications through the U.S. Business Advisor website available through the Small Business Administration.

#### **Other Internet Distribution**

In addition, the Commission has joined with other agencies to provide Internet users, including small businesses, with a new source of consumer news and information at <http://www.consumer.gov>. The website allows users to easily access government information while obviating the need for them to be able to identify the agency responsible for the subject matter. It offers a broad array of consumer information on topics that include health and safety issues, money and credit, children and education, the environment, transportation, food, how to avoid scams, and more. This ongoing project is a cooperative effort of several agencies, including the Federal Trade Commission, Securities and Exchange Commission, Food and Drug Administration, Consumer Product Safety Commission, and National Highway Transportation Safety Administration, that consolidated the information from their own websites at [consumer.gov](http://www.consumer.gov).

### **Commercial Publication Distribution**

Commission guidance also can be found in commercial publications describing the Commission and its enforcement activities. For example, the Statements of Antitrust Enforcement Policy in Health Care are published at 4 CCH Trade Regulation Reporter ¶ 13,153.

### **Official Documents**

Other sources of information about the Commission and its policies include proposed Commission consent agreements, final orders, and other formal documents. These are available in the FTC's Public Reference Room/Consumer Response Center. Many are available on the Commission's website as well.

### **Speeches**

Commissioners and Commission staff members frequently speak to business groups and conduct programs where they explain statutory and regulatory requirements and answer questions from individuals. Such presentations often include appearances before groups representing or including small-business interests. Small business groups may request speakers by contacting the Commission office that specializes in the subject matter of interest.<sup>13</sup> During the reporting period, Commissioners and Commission staff members made about 100 presentations to business groups and groups and organizations representing small-business interests. The speeches covered a broad range of subjects including, among others, developments in antitrust law and antitrust enforcement; health care mergers; advertising law and Internet advertising; telemarketing fraud; the Fair Credit Reporting Act and credit repair; investment, franchise, and business opportunity fraud; the FTC Funeral Rule; the FTC Care Labeling Rule; and textile product labeling. The Commission's Health Care Office made a special effort to provide information on health-care antitrust through speeches during this time. Members of the office addressed state medical societies in Michigan, California, Missouri, and New York, as well as the

American Medical Association, a national laboratory association, and a national

association of physician networks.

## INDIVIDUAL ADVICE

The Commission provides advice to individuals in a variety of ways and on many topics.

### **RESPONSES TO SPECIFIC QUESTIONS**

Small businesses may ask specific questions of the Commission or its staff, at headquarters or one of the FTC's ten regional offices.<sup>14</sup> Each substantive area under the Commission's laws and regulations has one or more staff members responsible for responding to inquiries about the law's requirements. Every year, the Commission staff responds to large numbers of inquiries from businesses, including many small businesses. Inquiries come to the Commission by telephone, letter, fax, or e-mail. Inquiry by telephone is encouraged because it is the agency's experience that the give-and-take of a conversation facilitates understanding an issue. If it appears that more detailed or complex information is needed to address an issue, the FTC staff may then ask the caller to send a supplementary letter. A staff member may determine that the agency's published material provides the assistance sought and send that material to the inquirer. If the sources of general information are insufficient to provide the needed guidance or assistance, the staff member may provide specific, informal advice or arrange for a formal response in the form of an advisory opinion.

To provide the Congressional Committees with specific information on Commission responses to inquiries from small businesses, it was necessary to develop a means of systematically recording such inquiries and responses over a period of time. During four selected weeks in 1997 (in May, June, September, and October), all Commission staff at headquarters and in the regional offices were alerted to keep a record of inquiries from, and responses to, businesses. The data from these four weeks has been used to project estimated total responses to inquiries for the reporting period. The information regarding inquiries and responses was recorded, collected, and entered into a computer database. Whenever possible, the staff responding to inquiries was asked to record the number of inquiries from small businesses. In many cases, this necessitated asking telephone callers whether they represented a small business (without necessarily asking for the identity of the particular company). In the case of letters, the staff was called upon to make judgments about the size of the business, based primarily on the nature of the industry. Capturing this information inevitably involved some informed assumptions. Nonetheless, the Commission believes it can provide a reasonable estimate of responses to small business inquiries.

### **BUREAU OF CONSUMER PROTECTION RESPONSES**

- g During its four weeks of data collection, the Commission's Bureau of Consumer Protection received 1,260 requests for compliance assistance on a wide range of topics from businesses. Of this total, 689 inquiries, or nearly 55%, appeared to come from small businesses or trade associations representing small businesses. During the entire reporting period, therefore, the Bureau of Consumer Protection estimates that it responded to a total of 12,285 requests for compliance assistance from businesses. Of this total, the Bureau estimates that it responded to 6,757 requests for compliance assistance from small businesses.
- g Separately, during the reporting period, Commission staff responded to approximately 1,300 requests for compliance assistance from small businesses regarding amendments to the Fair Credit Reporting Act, which became effective September 30, 1997.
- g Additionally, during the reporting period, Commission staff estimates that it responded to approximately 8,250 requests from small businesses for compliance assistance and information about Registered Identification Numbers (RNs), issued by the FTC for use on labels on clothing and other textile or fur products. Textile, wool and fur products, covered by the Textile Fiber Products Identification Act, the Wool Products Labeling Act, or the Fur Products Labeling Act, are required to bear a label identifying: (1) the fiber or fur content; (2) the business name of the manufacturer, importer, distributor, or seller; and (3) the country of origin. Businesses located in the United States may apply to the FTC for an RN number, which they may use on the label in place of the name. During the reporting period, the Commission placed information about RN numbers, including the RN number database with more than 100,000 entries, on the Internet at the FTC's website, <http://www.ftc.gov>. This makes frequently requested information about the identity of RN holders more readily available to the public.

## **BUREAU OF COMPETITION RESPONSES**

- g The Commission's Bureau of Competition, which enforces the antitrust laws, has fewer occasions than the Bureau of Consumer Protection to give small businesses advice concerning their obligations under the law. The antitrust laws typically impose obligations on firms that possess market power, and firms with this degree of market power are large businesses more often than small ones. Nonetheless, in those cases where the issues have been relevant, this Bureau also has provided small businesses with guidance on their legal obligations. The Bureau's Office of Policy and Evaluation, which serves as a point of contact for inquiries and complaints from the business community, responded to approximately 3,700 requests for legal guidance, including 17 specific requests for assistance in

complying with legal obligations, from small businesses during the reporting period.

- g** The Bureau of Competition's Health Care Office, which handles, among other things, mergers, joint ventures, and boycotts involving physician practices, also responds to inquiries from small businesses. Because the primary-care medical industry is relatively decentralized, and because physicians generally compete in local markets, the conduct of individual physician practices, which generally are small businesses, can be of competitive significance. Physician-related antitrust issues come up particularly often in the context of physician joint ventures. These ventures have become more common since the advent of managed care, because health plans often prefer to contract with a single large panel of doctors. During the reporting period, the Health Care Office handled 75 inquiries from individual physicians or small businesses seeking guidance on the relevant legal standards.
- g** The FTC's Bureau of Competition has a special program to provide advice to firms that must give premerger notification pursuant to the terms of the Hart-Scott-Rodino Act. While premerger notification is generally required only for larger transactions valued at more than \$15 million, some parties to such transactions may meet the definition of a small business. Any firm that is required (or believes it might be required) to give notification may receive guidance on the proper procedures from the Premerger Notification Office, in writing or by telephone, at (202) 326-3100. Interested firms also may obtain a set of written guides describing the program and explaining how to determine whether a particular firm must file. During the reporting period, the Premerger Office estimates that it responded to 672 inquiries from small businesses attempting to determine whether and how their planned mergers should be reported.

### **ORDER COMPLIANCE ADVICE**

The Commission has a special procedure to provide advice to any person or firm subject to an order of the Commission. The Compliance Division of the Bureau of Competition and the Enforcement Division of the Bureau of Consumer Protection are responsible for overseeing enforcement of and compliance with the competition and consumer protection administrative orders issued by the Commission. The Commission's general practice is to send a letter to each person or business subject to an order shortly after the order becomes effective. In addition to describing the general requirements of the order, the letter provides the name and telephone number of a staff person responsible for the matter. Staff of the Compliance and Enforcement Divisions are available to handle telephone and written inquiries concerning outstanding orders. Questions concerning the requirements or scope of a competition order may be sent to: Compliance Division, Bureau of Competition, Federal Trade Commission, Washington, D.C. 20580; questions regarding a consumer protection order may be sent to: Enforcement Division, Bureau of



Consumer Protection, Washington, D.C. 20580. Telephone inquiries may be made to the Bureau of Competition Compliance Division at (202) 326-2687, and to the Bureau of Consumer Protection Enforcement Division at (202) 326-2996. During the reporting period, Commission staff provided assistance and advice to 20 small businesses subject to Commission orders.

### **ADVISORY OPINIONS**

If the above sources of advice are insufficient for the inquirer's purpose, the Commission has procedures for providing, when appropriate, a Commission advisory opinion or, more commonly, a staff advisory opinion.<sup>15</sup> Advisory opinions are intended to clarify the law applicable to a course of action that the inquiring firm proposes to undertake. For small businesses, such opinions are a valuable source of advice and compliance assistance from the Commission and its staff. During the reporting period, the Commission staff issued 25 advisory opinions relevant to small businesses. These letters addressed a broad range of competition and consumer protection issues requiring analysis of guidelines, statutes and rules within the Commission's jurisdiction, including the U.S. Department of Justice/FTC 1996 Statements of Antitrust Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust, the FTC Act and the Fair Credit Reporting Act, and the FTC Franchise Rule.

In one well publicized opinion, for example, Commission staff responded to a request on behalf of the Direct Marketing Association (DMA) for an advisory opinion regarding its proposal to require that each DMA member: (1) participate in DMA's Mail Preference Service and Telephone Preference Service and honor consumers' requests to refrain from future contacts; (2) disclose to consumers whether and how it disseminates information on its customers; and (3) upon the customer's request, refrain from transferring information about that customer to others. On the basis of the information DMA provided, Commission staff advised that it would not recommend an antitrust challenge to DMA's proposed new policies.

All of the above programs to provide both general guidance and individual advice are offered by the Commission to assist small businesses in understanding their obligations under the laws and regulations administered by the Commission.

## CIVIL PENALTY LENIENCY

### SCOPE OF THE COMMISSION'S CIVIL PENALTY LENIENCY PROGRAM

Under Section 223 of SBREFA,<sup>16</sup> agencies regulating the activities of small businesses were required to establish, by March 29, 1997, a policy or program for “the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.” The statute suggests that “[u]nder appropriate circumstances, an agency may consider ability to pay in determining penalty assessments.” The statute further provides that the policy or program shall contain conditions or exclusions, which may include, but shall not be limited to:

1. requiring the small entity to correct the violation within a reasonable correction period;
2. limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State;
3. excluding from the program small entities that have been subject to multiple enforcement actions by the agency;
4. excluding violations involving willful or criminal conduct;
5. excluding violations that pose serious health, safety, or environmental threats;
6. requiring a good-faith effort to comply with the law.

Section 223 provides that the policy or program is “[s]ubject to the requirements of other statutes,” and thus does not supersede existing law on penalties. Also, because the leniency policy is prescribed only for civil penalties for violations of a statutory or regulatory requirement, it does not apply to Commission cease and desist orders, federal court injunctions, affirmative requirements for fencing-in or redress contained in Commission orders, or civil penalty actions under Section 5(*l*), 15 U.S.C. § 45(*l*), for violations of Commission orders.

None of the statutes or rules enforced by the Commission provides for the mandatory imposition of non-discretionary penalties. In most instances, the Commission is not authorized to assess civil penalties itself, but rather selects a civil penalty amount to be sought in a federal court action brought by the Department of Justice. In developing a policy statement with regard to civil penalty leniency for small businesses, the Commission

considered that it already exercises its discretion in a variety of contexts to consider mitigating factors when selecting penalty amounts. This experience suggested a list of factors suitable for selecting the penalties appropriate to small businesses.

First, Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), authorizes the Commission to seek, in federal district courts, up to \$11,000 per violation of certain Commission rules,<sup>17</sup> if the defendant knew or should have known that its acts violated the rule. In determining the appropriate amount of a penalty, the courts are directed by Section 5(m)(1)(C), 15 U.S.C. § 45(m)(1)(C), to take into account the degree of culpability; any history of prior such conduct; ability to pay; effect on ability to continue to do business; and such other matters as justice may require. The Commission also evaluates these factors to determine appropriate penalties in cases that are not litigated.

Second, one Commission rule has a separate enforcement mechanism. Under the Energy Policy and Conservation Act, 42 U.S.C. § 6303(a), the Commission has authority to assess administrative civil penalties, up to \$110 per violation, for violations of its Appliance Labeling Rule, 16 CFR Part 305. The Commission's Rules of Practice provide that factors to be considered in determining the amount of penalty include the respondent's size and ability to pay; the respondent's good faith; any history of previous violations; the deterrent effect of the penalty action; the length of time involved before the Commission was made aware of the violation; the gravity of the violation, including the amount of harm to consumers and the public caused by the violation; and such other matters as justice may require.<sup>18</sup>

Third, civil penalties may also be imposed for violations of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a ("HSR Act"). Under the HSR Act, acquisitions above a certain amount,<sup>19</sup> involving businesses above certain sizes,<sup>20</sup> cannot be consummated unless certain information is filed with the Commission and with the Department of Justice and certain waiting periods are observed. By statute, civil penalties of up to \$11,000 for each day a person is in violation of the HSR Act may be imposed in a federal court action brought by DOJ. The Commission is charged with administering the premerger notification program established by the HSR Act, and recommends actions and penalty amounts to DOJ. The Commission generally will consider the firm's ability to pay when recommending appropriate penalties. The Commission generally will not seek an enforcement action for a violation of the HSR Act that appears to be truly inadvertent and where the filing is made promptly after discovery of the oversight. If the violation is the firm's first, and is not the result of gross negligence or a reckless disregard for the filing obligation, the Commission staff generally sends a letter calling attention to the filing obligation but indicating that no further action will be taken if the filing requirement is promptly met.

Fourth, judicial opinions interpreting Section 5(l) of the FTC Act, which provides for civil penalties of up to \$11,000 per violation of FTC administrative orders, are instructive.<sup>21</sup> The statute does not set forth criteria for assessing specific penalties for Section 5(l) violations, but the Third Circuit Court of Appeals in *United States v. Reader's Digest Ass'n*, 662 F.2d 955, 967 (3d Cir. 1981), *cert. denied*, 455 U.S. 908 (1982), set out five factors bearing on the selection of an appropriate civil penalty or remedy: the good or bad faith of the respondent; the injury to the public; the respondent's ability to pay; the desire to eliminate the benefits derived from the violations; and the necessity of vindicating the Commission's authority. In each penalty case, the Commission selects an appropriate penalty amount after weighing the above factors, along with the litigation risks and penalties imposed in similar cases.

Finally, the Commission has undertaken an innovative approach to achieve compliance with one of its rules. In early 1996, the Commission approved a new program to increase compliance with its Funeral Industry Practices Rule, 16 CFR Part 453, which, among other things, requires funeral homes to give consumers a list of prices for various goods and services offered. The Funeral Rule Offenders Program ("FROP") was developed as a joint effort between the National Funeral Directors Association ("NFDA") and the FTC. Funeral providers that have failed to give test shoppers the itemized price lists required by the Funeral Rule are offered the option of entering the FROP program rather than facing possible formal legal action and the risk of paying a civil penalty. If they choose FROP, they make a voluntary payment to the U.S. Treasury or state Attorney General in an amount lower than would be sought in a civil penalty action and enroll in a compliance program administered by the NFDA. The NFDA program includes a review of the firm's practices, compliance training, and follow-up testing and certification.

In light of the Commission's past experience, as well as the factors suggested in SBREFA itself, the Commission adopted the following policy for reducing, or in appropriate circumstances waiving, civil penalties for violations of a statutory or regulatory requirement by a small entity:

When the Commission identifies a small entity as not being in compliance with a statutory or regulatory requirement within the Commission's jurisdiction, the Commission will consider the propriety of penalty waiver or reduction. The following factors will weigh in favor of leniency:

1. The small entity reported the violation to the Commission promptly after discovering it.
2. The small entity corrected the violation within a reasonable time, if feasible.
3. The small entity had a low degree of culpability. The degree of culpability reflects

the efforts taken by the entity to determine and meet its legal obligations. These efforts are judged in light of such factors as the size of the business; the sophistication and experience of its owners, officers, and managers; the length of time it has been in operation; the availability of relevant compliance information; the clarity of its legal obligations; and any active attempts to clarify any uncertainties regarding its obligations.

4. The small entity is financially unable to pay the usual penalty, or the usual penalty would impair the small entity's ability to do business or to compete effectively.
5. The small entity has not been subject to any previous enforcement action by the Commission or other federal, state, or local law enforcement jurisdiction for the same or similar conduct for which the small entity is being considered for leniency. Where there have been prior enforcement actions, however, the Commission may take into consideration, as possible mitigating factors, when the previous enforcement action occurred, and whether the small entity's management has changed since the previous enforcement action.
6. The small entity's violations did not involve willful or criminal conduct.
7. The violations did not pose a serious health, safety, environmental, or economic threat to consumers or the public.

Each factor need not necessarily be present for a small entity to qualify for leniency, and, depending upon the particular circumstances, some factors may be weighed more heavily than others. Also, any other factors relevant in particular circumstances will be considered, as appropriate.

The above criteria include most of the factors suggested in SBREFA. The one suggested factor that the Commission did not include is one that would limit the penalty reduction policy or program to violations discovered by the small entity through participation in an agency-run or state-run compliance assistance or audit program. The Commission does not have formal compliance assistance or audit programs. Given the variety and scope of the rules and statutes that the Commission enforces, imposing a parallel requirement, such as a self-auditing program, would unnecessarily restrict the availability of penalty waiver or reduction.

In addition, the Commission expanded somewhat the scope of two of the factors suggested in SBREFA. First, SBREFA suggests excluding entities that have been subject to multiple enforcement actions by the agency. The Commission broadened this category to include entities that have been subject to actions for the same or similar conduct by other federal agencies or state or local agencies. The law violations prosecuted by the

Commission are frequently very similar to violations prosecuted by other federal, state, and local law enforcement agencies.<sup>22</sup> It is therefore appropriate, in considering whether to exclude entities from lenient treatment, to consider whether similar conduct has been subject to enforcement efforts by such agencies.

Second, SBREFA also suggests excluding violations that pose serious health, safety, or environmental threats. The Commission, in addition to such risks, also considers serious economic injury, as that form of injury is the type most often encountered in Commission cases, and in many instances may cause as much serious injury as that arising from health, safety, or environmental threats.

## SMALL BUSINESS PARTICIPATION AND ACHIEVEMENTS OF THE SMALL BUSINESS CIVIL PENALTY LENIENCY PROGRAM

During the reporting period, eleven Commission enforcement actions against small businesses qualified for the FTC's civil penalty leniency program. The Commission did not seek civil penalties from any small businesses that failed to qualify for the Commission's program. Thus, eleven small businesses participated in the agency's civil penalty leniency program.

In five enforcement actions, the Commission *reduced* civil penalties by a total of \$916,000. In each instance, the small business settled FTC charges, filed in federal district court, alleging violation of a statute or rule enforced by the Commission. The size of the company was the most significant factor considered by the FTC in determining how much to reduce the civil penalty sought in each case. Applying the mitigating factors enunciated in its leniency policy, the Commission reduced civil penalties sought in each of these five cases primarily because the small business was financially unable to pay the usual penalty, or the usual penalty would have impaired the small business's ability to do business or to compete effectively. The amount of civil penalty reduction in each case was determined by subtracting the civil penalty amount the company agreed to pay, from the maximum civil penalty that the staff would have sought if the company had not been a small business.<sup>23</sup> Furthermore, the federal district courts accepted each settlement without modifying the civil penalty amounts the small businesses had agreed to pay.

In the first case, the complaint charged that a debt collection company and its president had violated the Fair Debt Collection Practices Act by using false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer. The settlement required the company and its

president to pay a civil penalty in the amount of \$60,000. The civil penalty was reduced by \$290,000 from the maximum civil penalty of \$350,000.

In the second case, the complaint charged that a debt collection agency and its officials violated the Fair Debt Collection Practices Act by using abusive and deceptive practices in attempting to collect debts from consumers. The settlement required the defendants to pay a civil penalty of \$25,000. The civil penalty was reduced by \$375,000 from the maximum civil penalty of \$400,000.

In the third case, the complaint charged an importer of women's clothing with violating the FTC's Care Labeling Rule by distributing garments with inaccurate and unsubstantiated care instructions. The settlement required the defendant to pay a civil penalty of \$4,000. The civil penalty was reduced by \$26,000 from the maximum civil penalty of \$30,000.

In the fourth case, the complaint alleged that a telecommunications franchisor had violated the FTC's Franchise Rule by failing to provide prospective buyers with required disclosures and earnings-claims documents and by making unsubstantiated earnings claims. The settlement required the defendant to pay a civil penalty of \$10,000. The civil penalty was reduced by \$115,000 from the maximum civil penalty of \$125,000.

In the fifth case, the complaint charged a hosiery mill with violation of the Textile Fiber Products Identification Act by selling to a national retailer a line of socks that were mislabeled as to their fiber content. The settlement required the defendant to pay a civil penalty of \$10,000. The civil penalty was reduced by \$110,000 from the maximum civil penalty of \$120,000.

In six enforcement actions, the Commission *waived* civil penalties by a total of \$260,895. Applying the mitigating factors enunciated in its leniency policy, the Commission waived civil penalties in each of these six cases because the small business was financially unable to pay the usual penalty, and even a reduced penalty would have impaired the small business's ability to do business or to compete effectively. In five of the cases, however, the civil penalty also was waived because the small businesses participated in the Commission's recently established Funeral Rule Offenders Program. The amount of civil penalty waiver in each case is equivalent to the maximum civil penalty the Commission would have sought if the small business had been subject to an FTC civil penalty enforcement action in federal district court. (See discussion, *supra*, at page 12.)

In the sixth civil penalty waiver case, the FTC's complaint charged that a hosiery mill had violated the Textile Fiber Products Identification Act by selling to a national retailer socks mislabeled as to their fiber content. The settlement prohibited the company from violating the Textile Act in the future and required the company to maintain and make available to the FTC business records demonstrating its compliance with the settlement. In this case, the Commission waived a maximum civil penalty of \$100,000.

In July 1997, as part of an ongoing nationwide law enforcement program to identify funeral homes that fail to comply with the price disclosure requirements of the FTC's Funeral Rule, the Commission announced the results of a funeral home sweep in New Jersey. The FTC used test shoppers from the American Association of Retired Persons ("AARP"), who visited 36 funeral homes to determine whether the homes provide consumers with a copy of an itemized general price list. Five of the funeral homes visited by AARP members appeared to be in violation of the Funeral Rule, and all five homes agreed to enroll in the FROP program. As a result of this sweep and entry into FROP, these five funeral homes made a total voluntary payment to the U.S. Treasury in the amount of \$25,750. This payment was lower than the civil penalty amounts the FTC might have obtained in formal law enforcement actions. In these five cases the Commission waived civil penalties totaling \$160,895.<sup>24</sup>





## OTHER FTC INITIATIVES TO ASSIST AND PROTECT SMALL BUSINESSES

### WORKSHOPS, CONFERENCES AND HEARINGS

Many of the Commission's rules and guides directly affect small businesses. When examining new issues and reviewing rules and guides that raise particularly complex or controversial issues, the Commission has made increasing use of informal public workshops and conferences to expand the dialogue and improve the way the Commission obtains the information it needs to make decisions. Public workshops and conferences bring together representatives of businesses large and small, consumers, academia, and government. They give participants an opportunity to expand upon written comments already submitted, obtain compliance information from the agency, and engage in dialogue and debate with one another. Workshops and conferences streamline the regulatory process and enhance the Commission's understanding of the issues at stake. They also provide small businesses with an opportunity to improve their understanding of, and the compliance obligations imposed by, the statutes and rules enforced by the Commission. During the reporting period, the Commission held public workshops and conferences, with small business participation, for the following initiatives:

#### **Franchise Rule**

The Commission hosted six public workshops in five cities across the country to encourage public participation in a rulemaking proceeding concerning the Franchise Rule, which requires franchise sellers to disclose specific information about the franchise system to prospective buyers before a sales agreement is completed. The Commission sought comment on whether it should revise the rule to align more closely federal and state disclosure requirements governing franchise sales, and to address changes in the marketing of franchises, such as the sale of franchises internationally and through the Internet. The workshops provided the Commission with additional information in advance of final rulemaking.

#### **Food Advertising**

Commission staff participated in a conference, hosted by the Food and Drug Law Institute, to educate members of the dietary supplement industry on FTC advertising substantiation policy. The conference included presentations on the FTC's policy, as well as a training session using case hypotheticals.

#### **900-Number Rule**

The Commission's Workshop on its 900-Number Rule was part of an FTC proceeding to consider expanding the Rule to cover audio information and entertainment services accessed by dialing telephone numbers that begin with numbers other than "900"

and to review whether the rule has been effective in curbing abuses associated with 900-number services.

### **Privacy Issues**

The Commission held a workshop on consumer privacy issues, including the online collection of information from children, computer databases, and unsolicited e-mail, to examine industry's response to the growing concern about personal privacy in the new online marketplace.

### **Weight Loss Issues**

The Commission coordinated a conference entitled Commercial Weight Loss Products and Programs: What Consumers Stand to Gain and Lose. The conference featured well-known experts from academia, government, and private industry, and addressed a wide range of policy issues regarding what might be done to combat the national rise in obesity. As a result of this conference, coalitions formed to create guidelines for voluntary information disclosure by sellers of weight-loss products and programs and to provide consumer education on weight-loss issues.

### **Joint Ventures**

The Commission conducted a hearing in connection with its Joint Venture Project to receive input on issues concerning business collaborations among competitors. The Joint Venture Project, undertaken by the FTC and the Department of Justice, is considering whether antitrust guidance to the business community can be improved by clarifying and updating antitrust policies regarding joint ventures and other forms of competitor collaborations.

## **STOPPING FRAUD AND DECEPTION AGAINST SMALL BUSINESSES AND ASPIRING ENTREPRENEURS**

One of the Commission's top priorities is combating fraudulent and deceptive marketing aimed at small businesses and those who want to start up small businesses. During the reporting period, the Commission's enforcement efforts to protect small businesses and aspiring entrepreneurs included the following:

- g** The Commission continued *Operation CopyCat*, a joint federal-state law enforcement sweep of allegedly fraudulent office and cleaning supply telemarketers who prey on small businesses and not-for-profit organizations. This sweep, coordinated by the Commission in 1996, resulted in 17 law enforcement actions by the FTC, the U.S. Postal Inspection Service, and state attorneys general and local law enforcement officials. The FTC obtained more than \$1.5 million in consumer redress in settlements with such office supply telemarketers. During the reporting

period, another telemarketer who allegedly bilked small businesses and not-for-profit organizations by sending and billing for unordered merchandise, then threatening those who did not pay, agreed to settle FTC charges of violation of the Telemarketing Sales Rule.

- g Law enforcement officials from all fifty states joined the FTC in **Operation False Alarm**, a sweep targeting fraudulent fund raising, on behalf of police and fire fighters, aimed at both consumers and small businesses. A total of 57 law enforcement actions were filed, including three by the FTC. A nationwide public education campaign was launched in cooperation with the National Association of Attorneys General.
- g Operators of an alleged illegal pyramid scheme, who advertised on the Internet and in newspapers that consumers could contribute to a charity and make huge monthly returns, agreed to settle FTC charges that false and misleading statements were used to sell memberships in the scheme. These operators were targeted as part of **Operation Missed Fortune**, a 1996 law enforcement crackdown on “get-rich-quick” schemes conducted by the FTC and 25 states. Initially, this crackdown resulted in 75 law enforcement actions against alleged self-employment scams, work-at-home schemes, and the deceptive sale of pre-packaged small businesses involving services ranging from vending machines to medical billing.
- g The Commission launched **Project Field of Schemes**, a sweep involving U.S. and Canadian enforcement authorities, which targeted the upsurge in the number and variety of investment-related telemarketing fraud, and resulted in 61 law enforcement actions and a consumer education campaign. Cases brought by the FTC alone stopped over \$150 million in alleged fraud.
- g In **Project Mousetrap**, the FTC and two state attorneys general brought seven actions against companies allegedly involved in schemes to “help” independent inventors market their inventions, including five firms that had sold over \$90 million in allegedly fraudulent services. A message of extreme caution was issued to consumers about using the very expensive, but almost always fruitless, services of invention promotion firms.
- g The FTC, the Kansas Attorney General, and seven additional states launched **Project Trade Name Games**, an aggressive assault on alleged swindlers who portrayed images of sure and generous profits through ownership of carousels displaying products licensed by well-known companies. Initially, the campaign netted 18 enforcement actions. The campaign also involved an education effort launched by the FTC in coordination with industry members whose trade names

have been used by scam artists to sell the bogus business opportunities.

- g The Commission launched *Operation Yankee Trader*, a multi-state law enforcement initiative aimed at fraudulent vending machine business opportunity firms. Connecticut, New Hampshire and Maine officials joined to take action against several vending machine sellers located outside the Northeast that were targeting New England consumers.
- g As part of *Project Mailbox*, the FTC, U.S. Postal Inspection Service, the National Association of Attorneys General, 25 state attorneys general and local law enforcement officials, and AARP announced 190 law enforcement actions against allegedly fraudulent direct mail schemes that target consumers and others, including small entities such as churches and non-profit organizations. The scams targeted in the sweep involved a range of alleged deceptive claims, including misrepresentations that a mailing was from the government; deceptive claims that consumers had won something; and false prize promotion claims.
- g Hundreds of get-rich-quick business opportunities and apparent pyramid schemes operating on the Internet were warned by law enforcement authorities across the country and around the world that their “fabulous offers” may be illegal operations. The FTC and two other federal law enforcement agencies, 23 state agencies, and consumer protection officials in 24 countries participated in the first *International Internet Sweep Day* to target get-rich-quick scams mushrooming on the Internet. A prime objective of the sweep was to educate businesses using the Internet about consumer protection laws, and to deter those who are violating the laws from continuing to do so.
- g *Operation Trip-Up*, a Telemarketing Sales Rule sweep that targeted fraudulent work-at-home travel agency business opportunities and other travel fraud, was launched by the FTC and 12 state attorneys general. The sweep resulted in 36 law enforcement actions, and the American Society of Travel Agents partnered with the FTC to produce and distribute educational materials on how to avoid being a victim of travel fraud.

## REGULATORY REFORM

The Commission has undertaken a range of initiatives to remove unnecessary regulatory burdens from business. The Commission continues to make these efforts a high priority, recognizing that regulatory reform may be especially helpful to small businesses. The Commission’s regulatory review program ensures that the usefulness, benefits, and costs of every Commission rule and industry guide are reviewed systematically at least

once every ten years. The Commission's program is far broader than any of the reviews currently mandated by law or established by executive order. Moreover, the program has yielded significant results. Since the 1992 initiation of the ten-year review program, the Commission has repealed almost 50% of its trade regulation rules<sup>25</sup> and about 40% of its guides. Most of this reform has taken place since 1995, when the Commission accelerated the process by adopting streamlined procedures. The Commission believes that its systematic review program will ensure that all of its rules and guides remain necessary and in the public interest.



## CONCLUSION

The Commission is pleased to submit this report to Congress regarding the scope, achievements, and number of small businesses participating in its small business compliance assistance and civil penalty reduction/waiver programs. The Commission believes that the accomplishments under SBREFA and otherwise described in this report illustrate the Commission's commitment to SBREFA's mission to foster a more cooperative, less threatening regulatory environment for small businesses.





## ENDNOTES

1. Pub. L. No. 104-121, 110 Stat. 857 (March 29, 1996), codified at 5 U.S.C. § 601 note. *See* Appendix 1. For purposes of SBREFA, the term “small entity” encompasses small businesses, small organizations, and small governmental jurisdictions. These terms are defined in 5 U.S.C. § 601. “Small business” is defined as a “small business concern” under the Small Business Act and implementing rules. “Small organization” means a not-for-profit enterprise that is independently owned and operated and not dominant in its field. “Small governmental jurisdiction” means a government (including a school district) or a locality with a population of less than 50,000.
2. In fiscal year 1997, the FTC had 928 FTE (full time equivalents).
3. While the statements were drafted specifically with respect to small businesses, similar compliance assistance is available to larger businesses, and some comparable factors for determining civil penalty amounts may be relevant to larger businesses as well.
4. 62 Fed. Reg. 16,809. The Commission sought public comment on the policy statements, and received only one comment. As explained in a subsequent notice, the comment was not relevant to either policy statement. 62 Fed. Reg. 46,363 (Sept. 2, 1997). *See* Appendix 2. These policy statements provide guidance and information only, and do not create any rights, duties, obligations, or defenses, implied or otherwise. The Commission retains the discretion to determine how to proceed in particular cases.
5. Section 213 of SBREFA, 5 U.S.C. § 601 note, provides:

Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.
6. The Commission has published compliance guides for nearly all of its Rules affecting small businesses, including the Mail Order Rule, Franchise Rule, Funeral Rule, Telemarketing Sales Rule, Telephone Disclosure and Dispute Resolution (“900” Number) Rule, and Used Motor Vehicle Rule. *See* Appendix 3 (Business Education Publications).
7. The Commission’s business guides have been prepared voluntarily. The FTC has not issued any rules subject to Section 212 of SBREFA, which requires that, for any new rule for which an

agency is required to prepare a final regulatory flexibility analysis under 5 U.S.C. § 604, the agency must publish a “small entity compliance guide” to assist small entities in complying with the rule.

8. There are more than 20 such guides, including guides for the use of environmental marketing claims, guides for the advertising of warranties and guarantees, guides for private vocational schools, and guides for the jewelry industry.

9. The Commission, jointly with the Department of Justice (“DOJ”), has issued guidance on such issues as health care, international operations, licensing of intellectual property, and horizontal mergers. The Commission has separately issued guidelines on promotional allowances and services.

10. For example, in the area of medicine and health care, the FTC and DOJ have jointly issued guidelines discussing nine frequently encountered subjects, such as physician network joint ventures, and hospital joint ventures involving specialized clinical or other expensive health care services.

11. *See* Appendix 4 (Consumer Education Publications).

12. Materials on both competition and consumer protection issues can be obtained by writing the Consumer Response Center, Room 130, Federal Trade Commission, Washington, DC 20580, or telephoning the CRC at (202) 326-2222.

13. Business groups can request speakers by contacting the Commission’s Bureau of Competition, (202) 326-3300, or Bureau of Consumer Protection, (202) 326-3238. Copies of major speeches are available from the Office of Public Affairs, (202) 326-2180, and on the Commission’s website.

14. Inquiries may be made to the Commission in the following ways:

- < Telephone inquiries regarding competition issues may be made to the general inquiries number of the Bureau of Competition, (202) 326-3300; calls regarding consumer protection issues may be made to the Bureau of Consumer Protection, (202) 326-2222. From these contact points, calls will be forwarded to the staff member best able to address the particular issue.
- < Written questions or comments regarding competition matters may be mailed to the Office of Policy and Evaluation, Bureau of Competition, Federal Trade Commission, Washington, D.C. 20580, or sent by fax to (202) 326-2884.
- < Written questions or comments regarding consumer protection matters may be

mailed to the Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, or sent by fax to (202) 326-2012.

- < Persons who are uncertain which of these offices to contact may write or call the Office of the Secretary, Federal Trade Commission, Washington, D.C. 20580, (202) 326-2515, or send a fax to (202) 326-2496.
- < Inquiries also can be sent by e-mail to “webmaster@ftc.gov,” where they will be forwarded to the appropriate staff person. E-mail requests for advice should include the inquiring party's telephone number because a telephone conversation may help to resolve the issue.
- < In addition, the Commission’s ten regional offices, listed below, may be contacted for information and materials regarding consumer protection or competition matters:

ATLANTA REGIONAL OFFICE  
Suite 5M35, Midrise Building  
60 Forsyth St., S.W.  
Atlanta, GA 30303  
(404) 656-1390 FAX: (404) 656-1379

BOSTON REGIONAL OFFICE  
101 Merrimac St., Suite 810  
Boston, MA 02114-4719  
(617) 424-5960 FAX: (617) 424-5998

CHICAGO REGIONAL OFFICE  
55 E. Monroe St., Suite 1860  
Chicago, IL 60603-5701  
(312) 960-5633 FAX: (312) 960-5600

CLEVELAND REGIONAL OFFICE  
Eaton Center, Suite 200, 1111 Superior Ave.  
Cleveland, OH 44114  
(216) 263-3455 FAX: (216) 263-3426

DALLAS REGIONAL OFFICE  
1999 Bryan St., Suite 2150  
Dallas, TX 75201  
(214) 979-9350 FAX: (214) 953-3079

DENVER REGIONAL OFFICE  
1961 Stout St., Suite 1523  
Denver, CO 80294-0101  
(303) 844-2272 FAX: (303) 844-3599

LOS ANGELES REGIONAL OFFICE  
10877 Wilshire Blvd., Suite 700  
Los Angeles, CA 90024  
(310) 824-4343 FAX: (310) 824-4380

NEW YORK REGIONAL OFFICE  
150 William St., 13th Floor  
New York, NY 10038  
(212) 264-8290 FAX: (212) 264-0459

SAN FRANCISCO REGIONAL OFFICE  
901 Market St., Suite 570  
San Francisco, CA 94103  
(415) 356-5270 FAX: (415) 356-5284

SEATTLE REGIONAL OFFICE  
915 Second Ave., Suite 2896  
Seattle, WA 98174  
(206) 220-6350 FAX: (206) 220-6366

15. 16 CFR §§ 1.1-1.4. Advisory opinions are intended to clarify the law applicable to a course of action that the inquiring firm proposes to undertake. Ordinarily advisory opinions are not appropriate if the requester is already engaged in that course of action.

An advisory opinion from the Commission may be appropriate if the matter involves a substantial or novel question of fact or law and there is no clear Commission or court precedent, or if the subject matter of the request and publication of Commission advice is of significant public interest. In other situations, a staff advisory opinion will be provided, when practicable and appropriate. A staff or Commission advisory opinion ordinarily will be considered inappropriate if the same or substantially the same course of action is already under investigation or is or has been the subject of current governmental proceedings; or if an informed opinion cannot be made, or could be made only after extensive investigation, clinical study, testing, or collateral inquiry. In addition, advisory opinions do not answer hypothetical questions. As previously noted, however, Commission staff will provide informal advice or guidance in response to inquiries.

The Commission may at any time reconsider the questions involved and rescind any advice

it gives in a Commission advisory opinion. Nevertheless, the Commission will not proceed against the requester of the advice respecting an action taken in good faith reliance on the advice, so long as the requester presented all relevant facts fully and accurately and discontinues the action promptly upon notification that the advice has been rescinded. Advice rendered in a staff advisory opinion does not bar the Commission from rescinding the advice and, when appropriate, initiating an enforcement action. Nonetheless, good faith reliance upon a staff advisory opinion would be a mitigating factor in a determination to bring such an enforcement action. Moreover, the advice given to a small business may be considered in an enforcement action as evidence of the reasonableness or appropriateness of any proposed fine, penalty, or damages sought against that small business.

It is often most efficient for a party seeking advice to make a telephone inquiry to the staff person responsible for the relevant area before deciding to request a formal advisory opinion. Anyone seeking an advisory opinion should submit a statement identifying the requester and stating the question, the relevant provision of law, and all material facts. The request and two copies should be submitted to the Office of the Secretary, Federal Trade Commission, Washington D.C. 20580. For further information, that office may be reached by telephone at (202) 326-2515.

For inquiries involving most types of issues under the Health Care Guidelines, the agency is committed to preparing advisory opinions within 90 days of the time that all necessary information has been submitted. *See* Introduction, Statements of Antitrust Enforcement Policy in Health Care, 4 CCH Trade Reg. Rep. ¶ 13,153 at p. 20,800. For matters on other topics, the time for reply will depend on the complexity and novelty of the issues raised.

16. 5 U.S.C. § 601 note.

17. In 1996, the Commission issued a rule implementing the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) by making inflation adjustments in the dollar amounts prescribed for each type of violation established by the statutory civil penalty provisions within the FTC's jurisdiction. *See* 61 Fed. Reg. 54,548 (Oct. 21, 1996).

18. The criteria for assessing penalties for violations of the Appliance Labeling Rule are set forth in Subpart K of Part 1 of the Commission's Rules of Practice, 16 CFR §§ 1.92-1.97.

19. Generally, at least \$15 million.

20. Generally, one of the businesses must have sales or assets above \$100 million and the other must have sales or assets above \$10 million. Because of the "size of person" and "size of transaction" thresholds, many small businesses are not subject to the premerger notification reporting requirements of the HSR Act.

21. The Commission's order enforcement cases are not included in the SBREFA civil penalty leniency program because, as noted above, SBREFA refers only to entities charged with violation of statutes and rules, not administrative orders. Moreover, Section 5(l) defendants are, by definition, repeat offenders, and therefore are unlikely to be good candidates for leniency. (As in all cases, however, the agency would consider individual facts that may affect the penalty to be sought in each particular case.)

22. In addition, the Commission often works with the State Attorneys General and other federal agencies, such as the United States Postal Inspection Service, to investigate conduct that may violate laws enforced by the Commission. In cases where we work with certain agencies, the Commission must often enter conduct orders to ensure that the violative behavior is prohibited nationwide.

23. This "maximum civil penalty" is not the same as the maximum civil penalty for which the company might have been liable under the statute. Even for large companies, the Commission often adjusts the penalty amount sought based on the circumstances of the case. The figures stated here reflect additional reductions applied to these small businesses.

24. Other Funeral Rule sweeps were conducted during the reporting period, but the funeral homes had not enrolled in the FROP program by December 31, 1997, the cut-off date for this report. The Commission, therefore, is not reporting them as achievements of its civil penalty leniency program at this time. In 1996, twenty-three funeral homes entered the FROP program and made over \$114,000 in voluntary payments to the U.S. Treasury or to appropriate state funds.

25. Trade regulation rules are those that are not statutorily required, but promulgated under the Commission's discretionary rulemaking authority, as specified in the FTC Act.

APPENDIX 1: SMALL BUSINESS REGULATORY ENFORCEMENT  
FAIRNESS ACT OF 1996





## APPENDIX 2: FEDERAL REGISTER NOTICES



## APPENDIX 3: BUSINESS EDUCATION PUBLICATIONS



**BUSINESS EDUCATION PUBLICATIONS**

Advertising Consumer Leases  
Business Guide to Mail and Telephone Order Merchandise Rule  
Business Check List for Direct Marketers  
Business Guide to Federal Warranty Law  
Buying By Phone  
Calling It Cotton: Labeling & Advertising  
Complying with the Telemarketing Sales Rule  
Complying with the Credit Practices Rule  
Complying with the Funeral Rule  
Complying with the 900 Number Rule  
Complying with the FTC's Appliance Labeling Rule  
Consumer Reports: What Insurers Need to Know  
Credit Reports: What Information Providers Need to Know  
Direct Marketers Guide to Labeling Requirements  
Donating to Public Safety Fundraisers  
Getting Business Credit  
Good Pricing Practices? Scan Do  
How to Write Adverse Action Notices  
How to Comply with the Used Car Rule  
How to Write Readable Credit Forms  
How to Comply with the FTC Fuel Rating Rule  
Labeling Fuels: A Compliance Guide  
Legal Supplement to Federal Warranty Law  
Measuring Up! Good Packaging Practices for Dairy Products  
Offering Layaways  
Office Supply Scams  
Raising Funds? What to Know About Hiring a Professional  
Using Consumer Reports: What Employers Need to Know  
When Yellow Pages Invoices Are Bogus  
Writing A Care Label  
Writing Readable Warranties  
Yellow Pages Invoice Scams



## APPENDIX 4: CONSUMER EDUCATION PUBLICATIONS





## **CONSUMER ALERTS**

Ads Promising Debt Relief May Be Offering Bankruptcy  
After a Disaster: Hiring a Contractor  
Avoid a Spring Break Bust  
Avoiding Home Equity Scams  
Avoiding the Muscle Hustle: Tips for Buying Exercise Equipment  
Beloved... Bejeweled... Be Careful  
Border-Line Scams Are the Real Thing  
Credit Repair: Help Yourself First  
FCC License Auctions  
Federal and Postal Job Scams: Tip-offs to Rip-offs  
Getting Purse-onal  
Green Card Lottery Scams  
How to Avoid Losing Your Money to Investment Schemes  
How to Dodge a Display Rack Scam  
International Lottery Scams  
Is There a Bandit In Your Mailbox  
Just When You Thought It Was Safe: Advance-fee Loan "Sharks"  
Kitchen Gadgets Offer ... Food For Thaw-t  
Look Before You Lease  
Net Based Business Opportunities  
Ouch - Students Getting Stung Trying to Find \$\$\$ For College  
Paunch Lines: Weight Loss Claims  
Penny Wise or Pump Fuelish  
Phone, E-mail, & Pager Scams  
Profits in Pyramid Schemes?  
Public Safety Fund-Raising Appeals  
Spotting Sweet-Sounding Promises of Fraudulent Invention Promotion Firms  
Thinking About a Home Improvement  
Traveler's Advisory: Get What You Pay For  
Trouble @ the In Box - Alert  
Virtual Treatments Can Be Real  
When Opportunity Knocks... See Who's There

## **AUTOMOBILES**

Auto Service Contracts  
Buying a Used Car  
Buying a Safer Car  
Buying a New Car  
Car Ads: Reading Between Lines  
Consider the Alternatives: Alternative Fueled Vehicles  
Gas Saving Products  
Keys to Vehicle Leasing

Renting A Car  
Taking the Scare Out of Auto Repair  
The Low-Down on High Octane Gasoline  
Vehicle Repossession

### **FTC BRIEFS**

\$100K a Year? Mmmmm....  
Make Huge Profits with Amazing No-Risk Investments  
The Muscle Hustle  
Saving \$\$ at the Pump  
So You've Got A Great Idea! Heads Up!

### **BUYING & WORKING AT HOME**

The Cooling Off Rule  
Shopping by Phone or Mail

### **CREDIT**

Avoiding Credit and Charge Card Fraud  
Building a Better Credit Record  
Choosing and Using Credit Cards  
Co-signing a Loan  
Credit Scoring  
Credit & ATM Cards: What To Do If They're Lost or Stolen  
Credit and Divorce  
Credit and Older Americans  
Credit Card Blocking  
Credit Practices Rule  
Credit Repair: Self-Help May Be Best  
Credit & Your Consumer Rights  
Electronic Banking  
Equal Credit Opportunity  
Fair Debt Collection  
Fair Credit Billing  
Fair Credit Reporting  
"File Segregation" A New Credit Identity Scam  
Getting Back In the Black  
Gold and Platinum Cards  
How to Dispute Credit Reports Errors  
Knee-Deep In Debt  
Secured Credit Card Marketing Scams  
Truth in Leasing  
Utility Credit

## **GENERAL**

Best Sellers for Consumers & Businesses  
FTC ConsumerLine: Open for Traffic  
Guide to the FTC  
How to Right a Wrong  
How to Resolve Consumer Disputes

## **HEALTH**

Eye Wear  
Fraudulent Health Claims  
Generic Drugs  
Health Spas: Exercise Your Rights  
Hearing Aids  
Indoor Tanning  
Infertility Services  
Protecting Kids from the Sun  
Skinny on Dieting  
Sunscreens  
Varicose Vein Treatments  
Vision Correction Procedures  
Who Cares?

## **INVESTMENTS**

Art Fraud  
Business Opportunity Scams: Avoiding Vending Machine and Display Rack Scams  
Consumers Guide to Buying a Franchise  
Costly Coupon Scams  
Franchise and Business Opportunities  
Going To Display Rack & Ruin  
Investment Risks  
Medical Billing Business Opportunities  
Multilevel Marketing Plans  
Telecommunication Scams: Using FCC Licenses  
Test Your Investment IQ  
Wealth Building Scams  
Work-At-Home Schemes

## **MISCELLANEOUS**

EnergyGuide - Consumer Tip Sheet  
Got a Great Idea? Postcard  
Stop Telemarketing Fraud Bumper Sticker  
The Real Deal Book Cover  
Wanna Buy A Bridge Postcard

Wish I Was There Postcard  
WWW.CONSUMER.GOV Postcard  
WWW.CONSUMER.GOV Bumper Sticker

### **ONLINE**

Cybershopping  
Net Based Business Opportunities  
Online Scams: Pot Holes on the Information Highway  
Site Seeing on the Internet  
Trouble @ the In Box

### **PRODUCTS**

All That Glitters... The Jive on Jewelry  
Buying Time: Pre-Paid Phone Cards  
Closet Cues: Care Labels and Your Clothes  
Energy Efficient Light Bulbs  
Grocery Store Rain Checks  
Infomercials  
Making Sure the Scanned Price Is Right  
Negative Option Plans  
Pump Fiction: Tips for Buying Exercise Equipment  
Service Contracts  
Tobacco Products  
Toy Ads on Television  
Unordered Merchandise  
Warranties  
Water Testing Scams

### **HOMES & REAL ESTATE**

EnergyGuide to Major Home Appliances  
EnergyGuide to Home Heating & Cooling  
Getting a Loan: Your Home as Security  
High Rate High Fee Loans (Sec32 Mortgages)  
Home Water Treatment Units  
Home Financing Primer  
Home Equity Credit Lines  
How to Buy a Manufactured Home  
Lawn Service Contracts  
Mortgage Discrimination  
Mortgage Servicing  
Rebuilding Your Home After a Disaster  
Refinancing Your Home  
Reverse Mortgages

Second Mortgage Financing  
Timeshare Tips  
Timeshare Resales  
Using Ads to Shop for Home Financing

**SERVICES**

Caskets and Burial Vaults  
Choosing a Career or Vocational School  
Focus on Phone Leasing  
Funerals: A Consumer Guide  
Help Wanted... Finding a Job  
Invention Promotion Firms  
It's Your Call: Shopping in the New Telecommunications Marketplace  
Layaway Purchase Plans  
Modeling Agency Scams  
Personal Emergency Response Systems  
Viatical Settlements

**TELEMARKETING**

900 Numbers: FTC Rule Helps Consumers  
Are You a Target of Telemarketing Scams?  
Automatic Debit Scams  
Charitable Donations: Give or Take?  
Easy Credit? Not So Fast: The Truth About Advance-fee Loans  
International Telephone Number Scams  
Magazine Subscription Scams  
Prize Offers  
Straight Talk About Telemarketing  
Telemarketing Reloading and Double Scamming  
Telemarketing Recovery Scams  
Telemarketing Travel Fraud  
Toll Free Telephone Number Scams  
While You Were Out

**BOOKMARKS & TIP CARDS**

Amazing Claims Bookmark  
Avoid Being a Victim of Telemarketing Scams  
Best Sellers - Health & Fitness Publications  
Best Sellers - Business Publications  
Buying an Energy Smart Appliance  
Caring For Your Clothes - Flyer  
Clothing Care Symbol Guide - Hang Card

Credit Rules Bookmark  
Cross Border Scams  
Do the Math: Magazine Subscription Scams  
Help Wanted... Finding a Job  
How To Be Web Ready Bookmark  
Is There a Bandit In Your Mailbox? Bookmark  
Make Huge Profits with Amazing No-Risk Investments  
Making Sure the Scanned Price Is Right  
Need Cash? Advanced-fee Loan Scams  
Now is the Time for All Good Consumers Bookmark  
Real Deal Bookmarks  
Spotting Office Supply Scams  
Stopping Telemarketing Scams  
Sweepstakes Strategies  
Think Twice....Investment Scams  
You've Won! Automatic Debit Scams

**YOUNG CONSUMERS**

Ready, Set... Credit  
The Real Deal

## APPENDIX 5: SAMPLE TRACKING FORM



