

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 41**

[Docket ID OCC–2008–0022]

RIN 1557–AD21

FEDERAL RESERVE SYSTEM**12 CFR Part 222**

[Docket No. R–1300]

RIN 7100–AD18

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 334**

RIN 3064–AD40

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Part 571**

[Docket No. OTS–2008–0026]

RIN 1550–AC31

NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Part 717****FEDERAL TRADE COMMISSION****16 CFR Part 660**

RIN 3084–AA94

Guidelines for Furnishers of Information to Consumer Reporting Agencies

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit Union Administration (NCUA); and Federal Trade Commission (FTC).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, OTS, NCUA, and FTC (Agencies) request comment to gather information that would assist the Agencies in considering the development of a possible proposed addition to the furnisher accuracy and integrity guidelines that were issued in today's **Federal Register**. Those guidelines, along with the accompanying

regulations, implement the accuracy and integrity provisions in section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) that amended section 623 of the Fair Credit Reporting Act (FCRA). This advance notice of proposed rulemaking (ANPR) seeks to obtain information that would assist the Agencies in determining whether it would be appropriate to propose an addition to one of the guidelines that would delineate the circumstances under which a furnisher would be expected to provide an account opening date to a consumer reporting agency to promote the integrity of the information. In addition, the Agencies request comment more broadly on whether furnishers should be expected to provide any other types of information to a consumer reporting agency in order to promote integrity.

DATES: Comments must be submitted by August 31, 2009.

ADDRESSES: Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Commenters are also encouraged to use the title "Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies" to facilitate the organization and distribution of the comments. Comments submitted to one or more of the Agencies will be made available to all of the Agencies. Interested parties are invited to submit comments to:

OCC: You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—“Regulations.gov”:** Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC–2008–0022” to submit or view public comments and to view supporting and related materials for this advance notice of proposed rulemaking. The “How to Use This Site” link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- **Mail:** Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

- **E-mail:** regs.comments@occ.treas.gov.

- **Fax:** (202) 874–5274.

- **Hand Delivery/Courier:** 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and “Docket Number OCC–2008–0022” in your comment. In general, OCC will enter all comments received into the docket and publish them on Regulations.gov without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials by any of the following methods:

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC–2008–0022” to view public comments for this advance notice of proposed rulemaking.

- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1300, by any of the following methods:

- **Agency Web site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- **FAX:** (202) 452-3819 or (202) 452-3102.
- **Mail:** Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by the RIN for this rulemaking, by any of the following methods:

- **Agency Web site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency Web site.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-Mail:** Comments@FDIC.gov. Include the RIN number in the subject line of the message.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- **Hand Delivery/Courier:** Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275-3342 or (703) 562-2200.

OTS: You may submit comments, identified by OTS-2008-0026, by any of the following methods:

- **Federal eRulemaking Portal "Regulations.gov":** Go to <http://www.regulations.gov>, under the "more Search Options" tab click next to the "Advanced Docket Search" option where indicated, select "Office of Thrift Supervision" from the agency drop down menu, then click "Submit." In the "Docket ID" column, select "OTS-2008-0026" to submit or view public comments and to view supporting and related materials for this advance notice of proposed rulemaking. The "How to Use This Site" link on the

Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- **E-mail address:** regs.comments@ots.treas.gov. Please include OTS-2008-0026 in the subject line of the message and include your name and telephone number in the message.

- **Mail:** Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, **Attention:** OTS-2008-0026.

- **Fax:** (202) 906-6518.

- **Hand Delivery/Courier:** Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, **Attention:** Regulation Comments, Chief Counsel's Office, **Attention:** OTS-2008-0026.

- **Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>, select "Office of Thrift Supervision" from the agency drop-down menu, then click "Submit." Select Docket ID "OTS-2008-0026" to view public comments for this advance notice of proposed rulemaking.

- **Viewing Comments On-Site:** You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments by any of the following methods (please send comments by one method only):

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **NCUA Web Site:** http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.

- **E-mail:** Address to regcomments@ncua.gov. Include "[Your name] Comments on Advance Notice of Proposed Rulemaking Part 717, Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act" in the e-mail subject line.

- **Fax:** (703) 518-6319. Use the subject line described above for e-mail.

- **Mail:** Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

- **Hand Delivery/Courier:** Address to Mary Rupp, Secretary of the Board, National Credit Union Administration. Deliver to guard station in the lobby of 1775 Duke Street, Alexandria, VA 22314-3428, on business days between 8 a.m. and 5 p.m.

All public comments are available on the agency's Web site at <http://www.ncua.gov/>

[RegulationsOpinionsLaws/comments](http://www.ncua.gov/RegulationsOpinionsLaws/comments) as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, VA 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

FTC: Comments should refer to "Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transactions Act, Project No. R611017," and may be submitted by any of the following methods. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).¹ Comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the FTC's General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

other State identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records and other individually identifiable health information.

- *E-mail:* <https://secure.commentworks.com/ftc-FACTAfurnishers>.

To ensure that the FTC considers an electronic comment, you must file it on the Web-based form found at this Web link and follow the instructions on that form.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. You may visit this Web site to read this request for public comment and to file an electronic comment. The FTC will consider all comments that [regulations.gov](http://www.regulations.gov) forwards to it.

- *Mail or Hand Delivery:* A comment filed in paper form should refer, both in the text and on the envelope, to the name and project number identified above, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex C), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The FTC Act and other laws the FTC administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the FTC, and will be available to the public on its Web site, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.htm>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT:

OCC: Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874-5750; Patrick T. Tierney, Senior Attorney, or Carl Kaminski, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090; or Malloy T. Harris, Jr., National Bank Examiner, Compliance Policy, (202) 874-4851, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Amy E. Burke, Senior Attorney, or Jelena McWilliams, Attorney, Division of Consumer and Community Affairs, (202) 452-3667 or

(202) 452-2412; or Anne B. Zorc, Counsel, (202) 452-3876, or Kara L. Handzlik, Attorney, (202) 452-3852, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Glenn S. Gimble, Senior Policy Analyst, (202) 898-6865, Division of Supervision and Consumer Protection; Richard M. Schwartz, Counsel, (202) 898-7424, or Richard B. Foley, Counsel, (202) 898-3784, Legal Division; 550 17th St., NW., Washington, DC 20429.

OTS: April Breslaw, Director, Consumer Regulations, (202) 906-6989; Suzanne McQueen, Consumer Regulations Analyst, Compliance and Consumer Protection Division, (202) 906-6459; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906-7409, at 1700 G Street, NW., Washington, DC 20552.

NCUA: Linda Dent or Regina Metz, Attorneys, Office of General Counsel, phone (703) 518-6540 or fax (703) 518-6569, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

FTC: Clarke W. Brinckerhoff and Pavneet Singh, Attorneys, (202) 326-2252, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Credit Reporting Act (FCRA), which was enacted in 1970, sets standards for the collection, communication, and use of information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.² In 1996, the Consumer Credit Reporting Reform Act extensively amended the FCRA.³ The FACT Act⁴ further amended the FCRA for various purposes, including improved accuracy of consumer reports.

Section 623 of the FCRA describes the responsibilities of persons that furnish information about consumers (furnishers) to consumer reporting agencies (CRAs).⁵ Section 312 of the FACT Act amended section 623 of the FCRA by requiring the Agencies to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that

they furnish to CRAs and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines (referred to in this ANPR as the accuracy and integrity regulations and guidelines).

In this issue of the **Federal Register**, the Agencies promulgated final rules and guidelines to implement section 312 of the FACT Act. Section .41(e)⁶ of the final rules defines the term "integrity" to mean that information that a furnisher provides to a CRA about an account or other relationship with the consumer:

- Is substantiated by the furnisher's records at the time it is furnished;
- Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and
- Includes the information in a furnisher's possession about the account or other relationship that the relevant Agency has:
 - Determined that the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and
 - Listed in section I.(b)(2)(iii) of the guidelines.

Section I.(b)(2)(iii) of the guidelines lists a "credit limit, if applicable and in the furnisher's possession." Thus, under the final rule that cross-references this provision of the guidelines, information relating to a consumer that is furnished to a CRA will not be deemed to have "integrity" if it does not include a credit limit, if the account or relationship with the consumer has a credit limit, and the credit limit is in the possession of the furnisher.

The Agencies now seek information to determine if they should include the account opening date as another item to be included in section I.(b)(2)(iii) of the guidelines. The Agencies also request comment on any other items that should be included in section I.(b)(2)(iii) of the guidelines in order to promote the integrity of information furnished to CRAs. Specifically, the Agencies request comment on whether there are other items of information the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, and which the Agencies should

² 15 U.S.C. 1681-1681x.

³ Public Law 104-208, 110 Stat. 3009 (Sept. 20, 1996).

⁴ Public Law 108-159, 117 Stat. 1952 (Dec. 4, 2003).

⁵ Section 623 is codified at 15 U.S.C. 1681s-2.

⁶ Section 660.2(e) in the FTC's rule.

list in section I.(b)(2)(iii) of the guidelines.

II. Account Opening Date

In general, credit scoring models use the following factors to generate a credit score: payment history, credit utilization (amount owed compared to the credit limit), length of credit history (time since accounts opened and time since account activity), number and types of credit accounts, new credit established, types of credit used, and bankruptcy filings.⁷ The Agencies understand that an account opening date may be used to determine the length of a consumer's credit history. A long-established credit history tends to affect positively a consumer's credit score, and may similarly affect other assessments of a consumer's creditworthiness.

The Agencies understand that some furnishers, including furnishers that provide only negative information to CRAs, may not include account opening dates in the information they provide to CRAs. The Agencies are concerned that, for at least some consumers, this practice may result in a lower credit score for the consumer than otherwise would be the case (or otherwise result in a more negative assessment of the consumer's creditworthiness). Therefore, the omission of the account opening date may result in higher costs and reduced access to credit and other products and services and present an incorrect impression of credit and other risks to lenders and other users of consumer reports.

The Agencies also recognize, however, that it is possible that the account opening date may not be a significant factor in determining a credit score in certain credit scoring models or in other assessments of a consumer's creditworthiness; that some credit scoring models and other assessment systems might be adjusted to compensate for the absence of an account opening date; and that other data might effectively be substituted for an account opening date.

III. Request for Comments

The Agencies believe that, in advance of proposing any additions or changes to the accuracy and integrity guidelines, it is appropriate to invite comment from

all interested parties on the following issues:

- To what extent, and under what circumstances, do furnishers provide account opening dates to CRAs? What factors determine whether that information will be provided?
- Would the absence of an account opening date or any other specific item in the information a furnisher provides to a CRA likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living? If so, how, and under what circumstances?
- Does the omission of an account opening date or other items of information otherwise compromise the integrity of information provided by furnishers to CRAs? If so, how, and under what circumstances?
- Should certain types of credit or other products or services be exempt from any proposed guideline for furnishing an account opening date or other items of information? For example, should any such new rules or guidelines be applicable only to mortgage or credit card products? Alternatively, should such rules or guidelines apply only to credit that is "consumer credit" as defined by Regulation Z (12 CFR 226)? Should any other types of credit products or services should be exempt, and, if so, why?
- Should accounts for which both positive and negative activity has been furnished on a regular basis for a certain period of time be exempt from any proposed rule or guideline for furnishing an account opening date or other items of information? If so, what is the appropriate period of time, and why?
- How should "account opening date" or other terms used to identify other items of information be defined, if at all? Are there types of credit or other products or services that, because of their nature, would not have an account opening date or other identified items of information? If so, please identify such credit products or services and explain why they would not have an account opening date or other identified items of information.
- What specific costs and benefits would be incurred and realized by consumers if furnishers were expected to furnish an account opening date or other items of information to CRAs?
- What specific costs and benefits would be incurred and realized by furnishers and users of consumer reports if furnishers were expected to

furnish an account opening date or other items of information to CRAs?

- What would be the effect on the credit reporting system if furnishers were expected to furnish an account opening date or other items of information to CRAs?

In addition, the Agencies specifically invite comment as follows:

The Agencies invite comment from individuals and consumer organizations on the effect on consumers and the credit reporting system if furnishers were required to provide CRAs with an account opening date or other items of information.

In addition, the Agencies recognize that small institutions operate with more limited resources than larger institutions. Thus, the Agencies specifically request comment on the impact on small institutions of a possible future proposal that would require furnishers to furnish more information to CRAs, such as an account opening date, and whether the goals of a possible future proposal could be achieved for small institutions through an alternative approach.

Finally, the Agencies invite comment on how a future proposal could affect the furnishing of information to specialized types of CRAs, such as CRAs that collect information for the purpose of making decisions regarding insurance, employment or tenant screening, or check verification, and to nontraditional CRAs that may only provide information to a limited class of businesses (e.g., medical information providers and tenant screening services).

IV. Regulatory Analysis

Executive Order 12866

Executive Order 12866 requires the preparation of an analysis for agency actions that are "significant regulatory actions." "Significant regulatory actions" are actions that may result in regulations that are likely to:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the

⁷ See Robert B. Avery, Raphael W. Bostic, Paul S. Calem & Glenn B. Canner, *An Overview of Consumer Data and Credit Reporting*, Federal Reserve Bulletin, vol. 89, at 47-73 (Feb. 2003); Robert B. Avery, Paul S. Calem, Glenn B. Canner & Shannon C. Mok, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin, vol. 90, at 297-322 (Summer 2004).

President's priorities, or the principles set forth in the Executive Order.⁸

This ANPR neither establishes nor proposes any regulatory requirements. Because this ANPR does not contain a specific proposal, information is not available with which to prepare a regulatory analysis. The OCC and OTS will each prepare a regulatory analysis if they proceed with a proposed rule that constitutes a significant regulatory action.

Accordingly, the OCC and OTS solicit comment, information, and data on the potential effects on the economy of any

changes to the guidelines that commenters may recommend. The OCC and OTS encourage commenters to provide information about estimates of costs, benefits, other effects, or any other information. In addition, the OCC and OTS ask commenters to identify or estimate start-up or non-recurring costs separately from costs or effects they believe would be ongoing. Quantitative information would be the most useful. The OCC and OTS will carefully consider the costs and benefits associated with any proposed changes to the guidelines.

Dated: May 15, 2009.

John C. Dugan,
Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, June 4, 2009.

Jennifer J. Johnson,
Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, the 8th day of June 2009.

Robert E. Feldman,
Executive Secretary, Federal Deposit Insurance Corporation.

Dated: April 2, 2009.

By the Office of Thrift Supervision.

John E. Bowman,
Acting Director.

By the National Credit Union Administration Board on May 21, 2009.

Mary Rupp,
Secretary of the Board.

By Direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. E9-15322 Filed 6-30-09; 8:45 am]

BILLING CODE 4810-33-P; 6210-01-P; 6714-10-P; 6720-01-P; 7535-01-P; 6750-01-P

⁸ Executive Order 12866 (Sept. 30, 1993), 58 FR 51735 (Oct. 4, 1993). A "regulatory action" is "any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking." Executive Order 12866, section 3(e).