

OCTOBER 29, 2012

## FTC's Nonadjudicative Procedures in Investigative Proceedings to Incorporate Modern Discovery Practices

The Federal Trade Commission ("FTC") released amendments to its Rules of Practice governing its nonadjudicative procedures in investigative proceedings ("Part 2 Investigations") that will become effective on November 9, 2012. The FTC instituted these changes to streamline the investigatory process, including an update of its practices regarding the discovery of electronically stored information. The FTC released the final version of the amendments to the public on September 20, 2012.

The highlights of the updated process include:

- Requiring parties to meet and confer with FTC staff within fourteen (14) days of receiving a subpoena or similar request;
- Streamlining the process for resolving disputes over FTC subpoenas and CIDs, as well as petitions to limit or quash FTC subpoenas and CIDs;
- Expediting the FTC's pre-merger review process by giving the agency's General Counsel the authority to initiate enforcement proceedings when a party fails to comply with the Hart-Scott-Rodino second request process; and
- Relieving parties of their obligations to preserve documents related to an FTC investigation after a year passes with no written communication from Commission staff. The revision does not remove any obligation that parties may have to preserve documents for investigations by other government agencies, or for litigation.<sup>1</sup>

Further, the FTC modified the definition of the term "electronically stored information" to include "any writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any electronic medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form."

As is the case with many of the recent updates to discovery or preservation requirements, the ubiquity of electronically stored information to modern commerce served as a major driver for the Part 2 Rule amendments. Additional details regarding the updates are available on the [FTC's website](#) and in the [Federal Register](#).



*This newsletter is an information source for clients and friends of Redgrave LLP. The content should not be construed as legal advice, and readers should not act upon information in this publication without professional counsel. This material may be considered advertising under certain rules of Professional Conduct. ©2012 Redgrave LLP. All Rights Reserved.*

*Contact Us: For further information or if you have any questions regarding this Alert, please contact your Redgrave LLP attorney or Managing Partner Victoria Redgrave at (202) 681-2599 or [vredgrave@redgravellp.com](mailto:vredgrave@redgravellp.com).*

---

<sup>1</sup> FTC, FINALIZES PROCEDURE CHANGES TO STREAMLINE AGENCY INVESTIGATIVE PROCESSES AND KEEP PACE WITH TECHNOLOGY, (Sept. 20, 2012).

